J. Whitehead
B. Strode.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 292

CARRIE BUCK, BY R. G. SHELTON, HER GUARDIAN AND NEXT FRIEND, PLAINTIFF IN ERROR,

vs.

J. H. BELL, SUPERINTENDENT OF THE STATE COLONY FOR EPILEPTICS AND FEEBLE MINDED

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA

FILED FEBRUARY 6, 1926

(31,681)

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IN SUPREME COURT OF APPEALS OF VIRGINIA

CARRIE BUCK, by R. G. SHELTON, Her Guardian and Next Friend,

vs.

Dr. J. H. BELL, Superintendent of State Colony for Epileptics and Feeble-Minded

ORDER ALLOWING WRIT OF ERROR AND SUPERSEDEAS—June 8, 1925

Upon the petition of Carrie Buck, by R. G. Shelton, her Guardian and next friend a writ of error and supersedeas is awarded her to a judgment of the Circuit Court of Amherst Company, entered on the 13th day of April, 1925, in the cause then therein depending wherein Carrie Buck, by etc., was appellant and Dr. J. H. Bell, Superintendent of State Colony for Epileptics and Feeble-minded was appellee, no bond being required.

A copy. Teste:

J. M. Kelly, C. C.

[fol. 10] IN CIRCUIT COURT OF AMHERST COUNTY

[Caption omitted]

MINUTE ENTRIES—April 13, 1925

Be it remembered, that heretofore, to-wit: On the 3rd day of October, 1924, A. S. Priddy, Superintendent of the State Colony for Epileptics and Feeble-Minded, transmitted to the Clerk of the said Circuit Court of the County of Amherst the notice of the appeal of R. G. Shelton, guardian for Carrie Buck, and the said Carrie Buck, by the said R. G. Shelton, her guardian and next friend, from an order of the Special Board of Directors of the said State Colony for Epileptics and Feeble-Minded, entered on, to-wit, September 10, 1924, providing for the operation of

salpingectomy upon the said Carrie Buck, to the said Court, together with a copy of the petition, evidence and orders of said Special Board of Directors, certified by its Chairman; all of which were duly filed in the Clerk's Office of said Court, and the said appeal was duly docketed to be heard by said Court, as provided and directed by law, and which notice of appeal, petition, evidence and orders are in the following words and figures, to-wit:

(See Plaintiff's bill of exception, pages 10 to 40 of this transcript.)

In Circuit Court of Amherst County

Carrie Buck, an Inmate of the State Colony for Epileptics and Feeble-Minded, by R. G. Shelton, Her Guardian and Next Friend,

vs.

A. S. Priddy, Superintendent of the State Colony for Epileptics and Feeble-Minded

Appeal from an Order of the Special Board of Directors of the State Colony for Epileptics and Feeble-Minded Ordering the Sterilization of the said Carrie Buck

Argument and Submission and Order Continuing Cause—November 18, 1924

This day came the said Carrie Buck in her own proper person as well as the said R. G. Shelton, her guardian and next friend, and also by her attorney; and also came the said A. S. Priddy, Superintendent of the State Colony for [fol. 11] Epileptics and Feeble-Minded, in his own proper person, and by his attorney. And thereupon the Court having heard the evidence and arguments of counsel, takes time to consider of its opinion in this case. And thereupon, with the consent of the parties, it is ordered that this case be continued.

IN CIRCUIT COURT OF AMHERST COUNTY

[Title omitted]

JUDGMENT—April 13, 1925

This day came J. H. Bell, Superintendent of the State Colony for Epileptics and Feeble-Minded, the successor in office of A. S. Priddy, Superintendent, deceased, and moved the Court that this suit proceed against him and in his name in the place and stead of the said A. S. Priddy, Superintendent, who has departed this life, and it appearing to the Court that the said J. H. Bell, Superintendent as aforesaid, is the successor in office of the said A. S. Priddy, Superintendent, and no sufficient cause having been shown against it, on said motion and by consent of the parties by counsel it is ordered that the said suit proceed against the said J. H. Bell, Superintendent of the State Colony for Epileptics and Feeble-Minded as aforesaid.

And thereupon this day came the parties by their attorneys and the Court having on a previous day, to-wit, on the 18th day of November, 1924, duly heard the evidence offered by the parties, the said Carrie Buck with her guardian, Robert G. Shelton, having been in personal attendance at the said hearing, and the Court having heard also the argument of counsel and being now advised of the judgment that it should render, the Court is of opinion that the Act of the General Assembly of Virginia entitled An Act to provide for the sexual sterilization of inmates of State Institutions in certain cases, approved March 29, 1924, is a valid and constitutional enactment and not obnoxious to the objections urged against it as contrary to the provisions of the Constitution of the State of Virginia and of the United States, and doth so decide.

[fol. 12] And it further appearing to the Court and the Court finding as facts established by the evidence that the said Carrie Buck is feeble-minded as defined by the statutes of Virginia for such cases made and provided, that she is a duly committed inmate and patient of the State Colony for Epileptics and Feeble-Minded; that Emma Buck, the mother of the said Carrie Buck, is also feeble-minded and an inmate of the said institution; that the said Carrie Buck is the mother of an apparently feeble-minded infant; that

the said Carrie Buck is afflicted with a hereditary form of feeble-mindedness; that the said Carrie Buck was duly proceeded against by the said A. S. Priddy, Superintendent, before the Special Board of Directors of the State Colony for Epileptics and Feeble-Minded, in strict accordance with all the requirements and provisions of the said Act approved March 29, 1924; and the Court having further found as facts upon the evidence adduced that the said Carrie Buck is feeble-minded and by the laws of heredity is the probable potential parent of socially inadequate offspring, likewise afflicted, that she may be sexually sterilized without detriment to her general health and that her welfare and that of society will be promoted by her sterilization, it is considered and ordered by the Court that the order of the said Special Board of Directors of the State Colony for Epileptics and Feeble-Minded appealed from and entered on, to-wit: September 10, appearing in the record of the said appeal ordering the said A. S. Priddy, Superintendent, to perform or to have performed by Dr. J. H. Bell, a competent and capable physician, the operation of salpingectomy up the said Carrie Buck, be and the said order is hereby affirmed. And the said Dr. J. Bell, Superintendent, a competent and capable physician, is hereby ordered to perform, after not less than 90 days from the date of this order, the operation of salpingectomy upon the said Carrie Buck.

The said Robert G. Shelton, guardian and next friend of the said Carrie Buck, having excepted to this order and expressed the purpose to apply for and appeal therefrom to the Supreme Court of Appeals, it is further ordered that the execution of this order be suspended for a period of four months from the entry hereof, and the Clerk of this Court is directed to certify a copy of this order to the Special Board of Directors of the said State Colony for Epileptic and Feeble-Minded.

[fol. 13] IN CIRCUIT COURT OF AMHERST COUNTY

[Title omitted]

BILL OF EXCEPTIONS AND ORDER SETTLING SAME—Filed April 23, 1925

Be it remembered that upon the trial of the above entitled proceeding, the evidence introduced is shown in the stenographer's transcript of the evidence hereto attached and identified by the signature of the Judge of the Court, at the bottom of page 97 thereof, and the annexed copy, certified by W. E. Sandidge, Clerk, of the deposition of H. H. Laughin and of the commitment papers and proceedings before the Special Board of Directors of the State Colony for Epilepties and Feeble-Minded, and the appellant offering no evidence the said transcript with the said annexed copies contains all the evidence that was heard upon the aforesaid appeal; and after the hearing of the said evidence and the argument of counsel the Court affirmed the sterilization order of the said Special Board appealed from, as is shown in the order entered by the Court upon the said appeal on, to-wit, April 13, 1925, to which opinion, order and judgment of the Court the said R. G. Shelton, Guardian and next friend for Carrie Buck, duly excepted and prays that this his Bill of Exceptions No. 1 be duly certified, [fol. 14] signed, sealed and made a part of the record in this case, which is accordingly done, after due proof of due and reasonable notice in writing to opposite counsel of the time and place of tender hereof, this 23rd day of April, 1925.

B. T. Gordon, Judge. (Seal.)

IN CIRCUIT COURT OF AMHERST COUNTY

NOTICE OF PRAECIPE FOR BILL OF EXCEPTIONS—Filed October 3, 1924

To Aubrey E. Strode, attorney for Dr. J. H. Bell, superintendent of State Colony for Epilepties and Feeble-Minded:

Take notice that the undersigned R. G. Shelton, Guardian and next friend for Carrie Buck, will on Thursday, the 23rd day of April, 1925, at 2:00 p. m. o'clock, or as soon

thereafter as the matter may be heard, at Amherst, Virginia, present to the honorable B. T. Gordon, Judge of the Circuit Court of Amherst County, the bills of exception asked for by the undersigned in the sterilization proceedings therein on appeal from the order of the Special Board of Directors of the aforesaid Colony.

Respectfully, R. G. Shelton, Guardian and Next Friend of Carrie Buck, by Counsel. I. P. Whitehead, Counsel.

Legal service of the above is hereby acknowledged.
Aubrey E. Strode, Attorney for Dr. J. H. Bell, Superintendent.

Colony P. O., nr. Lynchburg, Va,.

Sept. 29, 1924.

Mr. W. E. Sandidge, Clerk of the Circuit Court, Amherst, Virginia.

My Dear Mr. Sandidge: At the request of the attorney for Board of Directors of this institution I am enclosing you certified copy of the record in the matter of steriliza-[fol. 15] tion of Carrie Buck, a feeble-minded female patient of this institution, as ordered by the special board at its meeting here September 10, 1924, as is provided by law in appeals to the Circuit Court, such an appeal having been taken by Mr. Robert Shelton, guardian, and I. P. Whitehead, attorney. I will thank you to make proper disposition of them.

With kind personal regards,

Sincerely yours, A. S. Priddy, Superintendent.
ASP:C.

[File endorsement omitted.]

In Circuit Court of Amherst County

Notice of Appeal and Praecipe for Transcript of Record—Filed October 3, 1924

To A. S. Priddy, superintendent, and the members of the special board of directors of the State Colony for Epileptics and Feeble-Minded, and to Emma Buck, mother of Carrie Buck:

Take notice that the undersigned R. G. Shelton, Guardian for Carrie Buck, and the said Carrie Buck, by the said R. G. Shelton, her guardian and next friend, hereby appeals to the Circuit Court of Amherst County from the order of the said Board entered on, to-wit, September 10, 1924, providing for the operation of salpingectomy upon the said Carrie Buck, and for grounds of the appeal assign, among others:

(1) The evidence does not support or warrant the said order.

(2) The Act of the General Assembly of Virginia entitled An Act to provide for the sexual sterilization of Inmates of State Institutions in certain cases, approved March 20, 1924, Acts 1924, page 569, under which the said Board undertook to proceed in this case, is unconstitutional and void, its provisions being contrary both to the Constitution of Virginia and of the United States in that, among other things,

(a) It does not provide due process of law.

(b) It denies to appellant and other inmates of said institutions the equal protection of the laws.

(c) It imposes a cruel and unusual punishment.

[fol. 16] It is, therefore, prayed that a copy of the record of the said proceedings be forthwith certified to the Circuit Court of Amherst County and forwarded to the Clerk of said Court without delay, and that pending such appeal all proceedings under the said order be suspended.

Respectfully, R. G. Shelton, Guardian for Carrie Buck, and the said Carrie Buck, by R. G. Shelton, Guardian and Next Friend.

Legal service of the above notice is accepted this 22nd day of September, 1924.

A. S. Priddy, Superintendent. H. M. Davis, Member of the Special Board of Directors.

Oct. 2, 1924.

I hereby certify that I delivered a true copy of the within notice of appeal to Emma Buck, the mother of Carrie Buck.

I. P. Whitehead.

Sworn to before me the 3rd day of Oct. 1924. W. E. Sandidge, Clerk Amherst Cir. Court.

[File endorsement omitted.]

[fol. 17] BEFORE THE SPECIAL BOARD OF DIRECTORS OF THE STATE COLONY FOR EPILEPTICS AND FEEBLE-MINDED

A. S. PRIDDY, M. D., Superintendent,

v.

CARRIE BUCK, Infant Inmate of the Above Institution

PETITION

To the Special Board of Directors of State Colony for Epileptics and Feeble-Minded:

Your petitioner, the undersigned A. S. Priddy, M. D., Superintendent of the State Colony for Epileptics and Feeble-Minded, acting pursuant to the provisions of the Act of the General Assembly of Virginia, approved March 20, 1924. (Chap. 394, Acts of Assembly, 1924) entitled "An Act to provide for the sexual sterilization of inmates of State institutions in certain cases," respectfully represents:

(1) Petitioner is the duly appointed Superintendent of the aforesaid State Colony for Epileptics and Feeble-Minded.

(2) Petitioner is of opinion that it is for the best interests of the aforesaid Carrie Buck and of society that the

said Carrie Buck, who is an inmate of the said institution under petitioner's care, should be sexually sterilized, she being afflicted with feeble-mindedness.

(3) The facts of the case and the grounds of petitioner's opinion, verified by his affidavit hereinafter made, to the best of his knowledge and belief, are as follows:

The said Carrie Buck, by reason of the laws of heredity, would in all probability, if permitted to bear children, transmit to her offspring some form of mental defectiveness by which the offspring would, in view of professional experience and teaching, develop some form of mental disease or defect such as feeble-mindedness, insanity or epilepsy, and by reason of her anti-social conduct and mental defectiveness, she is unfit to exercise the proper duties of motherhood. The said Carrie Buck is possessed of good physical health and strength and if by sterilization she be made incapable of child-bearing could leave the Colony and enjoy the liberty and blessings of outdoor life, become self-supporting, and thereby relieve the Commonwealth of Virginia of the burden of the support of her under custodial care, in a State institution for mental defectives during the period of child-bearing and the said Carrie Buck desires that the said operation be performed. [fol. 18] The said Carrie Buck was received into the State Colony, after having been committed from the City of Charlottesville, on January 2, 1924, and admitted to the said State Colony on June 4, 1924, and the following facts are given in depositions taken at the time of commitment:

Sex, female, born July 2, 1906, in Charlottesville, Va. single—has resided with J. F. Sables, Green St., Charlottesville—Nearest kin—Is her mother, Emma Buck, a feeble-minded inmate of the State Colony—Father, Frank Buck, is dead.

Moral delinquent—had just given birth to a mentally defective child before admission. Mother, Emma Buck, is a feeble-minded inmate of the State Colony—Papers state that she had outbreaks of temper and some hallucinations. Since admission to the Colony mental test and observation have confirmed the findings of the commission, she having a mental age of 9 years and feeble-minded of the Moron class.

(4) The said Carrie Buck has no father living, her mother, Emma Harlowe Buck, is a legally committed inmate, feeble-minded, in the State Colony for Epileptics and Feeble-minded, and so far as your petitioner knows, is advised and believes, the said Carrie Buck has no legal guardian or committee and she is now of the age of 18 years her last birthday.

Upon the application of your petitioner the Circuit Court of Amherst County in which said institution is located, on Monday, July 21, 1924, Robert G. Shelton, of Madison Heights, Va., was appointed to act as guardian of the said Carrie Buck during and for the purpose of the proceedings hereunder to defend her rights and interests as provided by said statute. A copy thereof, certified by the Clerk of the said Court, is filed as an exhibit herewith.

In consideration of the premises petitioner prays that your honorable Board, after notice given according to law, shall hear and determine the prayer of this petition that the said Carrie Buck may be sexually sterilized by the performance upon her of the operation of salpingectomy, to be performed by Dr. A. S. Priddy, of Colony, Va., who is a competent and capable physician therefor, or by some other competent and capable physician to be designated by your honorable Board in its order hereupon, and that petitioner may be authorized to have such operation performed.

[fol. 19] Petitioner prays for all such other and general authority and relief and orders in the premises as may be proper.

Respectfully, A. S. Priddy, Petitioner.

Duly sworn to by A. S. Priddy. Jurat omitted in printing.

BEFORE THE SPECIAL BOARD OF DIRECTORS OF STATE COLONY FOR EPILEPTICS AND FEEBLE-MINDED

[Title omitted]

NOTICE OF FILING OF PETITION

To Carrie Buck, Emma Buck, mother of the said Carrie Buck, Robert G. Shelton, guardian of the said Carrie Buck for the purposes of the above-entitled proceedings:

Take notice that the undersigned Superintendent of the aforesaid State Colony for Epileptics and Feebleminded will on Wednesday, Sept. 10, 1924, or as soon thereafter as the matter may be heard by the said Board, present to the [fol. 20] Special Board of the State Colony for Epileptics and Feebleminded, at their place of meeting in the said institution at Colony, Amherst County, Va., the petition, a copy of which is hereto attached as a part of this notice, when and where the said Board will be asked to hear and act upon said petition.

Given under my hand this 24th day of July, 1924.

A. S. Priddy, Supt. State Colony for Epileptics and Feebleminded.

The following endorsements appear on the back of the foregoing notice: Legal service of within notice is hereby acknowledged this 9th day of August, 1924. Carrie Buck, Mrs. Emmett Buck, mother. R. G. Shelton, Guardian.

STATE OF VIRGINIA,
County of Augusta, To wit:

I, Mrs. R. I. Berry, hereby make affidavit that I executed the within notice by delivering a copy thereof and of the attached petition to Carrie Buck and Mrs. Emma Buck, her mother, in the County of Amherst on the 9th day of August, 1924.

Mrs. R. I. Berry.

Subscribed and sworn to before me, in my county of Amherst, this 10th day of September, 1924. Louise Brown, Notary Public, Amherst County, Va.

[fol. 21] BEFORE SPECIAL BOARD OF DIRECTORS OF STATE COLONY FOR EPILEPTICS AND FEEBLE-MINDED

INQUISITION OF CARRIE E. BUCK

In case of a feeble-mi*d*ne*d* or epileptic white person in the State Colony for Epileptics and Feeble-Minded at Madison Heights, Va., and for a colored feeble-minded or epileptic person to the departments of the Central State Hospital for Epileptic and Feeble-Minded at Petersburg, Virginia.

Approved by General State Hospital Board February 11, 1920

Positively no paper will be accepted unless the following conditions are complied with:

The commission will fill out and sign two blanks and, without delay, deliver one copy to the sheriff of the county or sergeant of the city, and mail one copy to the clerk of the circuit court of the county or the corporation court of the city. The sheriff will forward the copy in his hands to the superintendent of the colony, and the clerk of the court will, after notifying the Commissioner of State Hospitals and the State Board of Public Welfare, as prescribed in sections 1022 and 1081, as amended, of the commitment of the patient, his copy to the superintendent of the colony, who on admission of patient, shall endorse on it the date of admission and return to the clerk to be filed in his office. The importance of securing an intelligent answer and accurate information in the case of every question is impressed on the commission, and it is also necessary that the name of the person, his post-office, telephone or telegraph address and railroad station, who has the patient in custody be plainly written on the back of each paper in the spaces designated for that purpose. No paper can be accepted as in compliance with law unless these instructions are strictly observed, and failure to do this will delay the admission of the patient until the papers are returned and corrected.

In committing epileptics, all questions asked in interrogatories for the feeble-minded and in addition questions asked in space designated for "Epileptics" must be answered.

COMMONWEALTH OF VIRGINIA,
City of Charlottesville, To wit:

Inquisition this 23rd day of January, 1924, by C. D. Shackelford, Justice, and J. C. Coulter, Medical Doctor, and J. F. [fol. 22] Williams, Medical Doctor, licensed physicians, now sitting upon the examination of Carrie E. Buck, believed to be feeble-minded and a proper subject for care and treatment in an institution for such persons.

The depositions of the above physicians and Mrs. Alice Dobbs and J. F. Dobbs, witnesses, being duly sworn, in answer to the following interrogatories, say:

1. Personal and Developmental History

Questions	Answers
What is the patient's name?	Carrie E. Buck. Sex: Female.
When was the patient born?	Day, 2d; Month, July; Year, 1906.
Where born?	Charlottesville, Va.
Is she married, single, or divorced?	Single.
What is the present residence of patient and how long there?	With J. F. Dobbs, Grove St., Charlottesville.
Color?	White.
Did prolonged or instrumental delivery attend the birth of patient?	Unknown.
At what age did she begin to walk?	Unknown. Talk: Unknown.
At what age was any mental peculiarity first noticed?	Since birth.
How was the peculiarity manifested?	Peculiar actions.
Is she now or has she ever been subject to epilepsy, headaches, nervousness, fits or convulsions of any kind—if so, describe fully.	No.
Does she take proper notice of things?	No.

Questions	Answers
Does she recognize colors—if so, which?	Yes.
Does she recognize and distinguish common objects?	Yes.
Does she understand language or a command?	Yes.
Can she do a simple errand?	Yes.
Has patient ever had any serious illness; if so, what?	No.
Is patient the parent of any children, and if so, how many?	No.
Has she ever had any miscarriages or still-born children—if so, how many?	No.

[fol. 23] 2. Physical Condition

What is the general health of the patient?	Good.
Is patient of average size for age?	Yes.
Is there any peculiarity or deformity in the form of head, or paralysis of body or limbs? Describe	No.
Is there any defect in sight, speech or hearing?	No.
Can patient talk distinctly?	Yes.
What is the condition of tonsils, teeth, ears, and eyes?	Teeth fairly good.
If female, is she pregnant or has she missed any menstrual periods? Give particulars	Yes.
Has patient ever had syphilis? Give particulars	No.
Is patient now suffering from any venereal disease?	No.
Has patient been exposed to any contagious disease, or is she suffering from any such disease at this time?	No.

Questions	Answers
Has patient prolonged cough or tuberculosis?	No.
Has patient been successfully vaccinated against smallpox?	Yes.

3. Family History

Name of father	Frank Buck.
Where born?	Virginia.
Maiden name of mother?	Emma Harlow.
Where born?	State Colony for Epileptics and Feeble-Minded at Lynchburg, Va.
If both alive, are they living together?	No.
What is the mental and physical condition of living parent or parents?	Mother feeble-minded.
[fol. 24] Has either parent ever been alcoholic, insane, epileptic, feeble-minded or syphilitic? Give particulars?	Mother feeble-minded.
Has any grandparent, uncle, aunt, brother, sister, or other blood kin been insane, epileptic or mentally defective? Give particulars and whether maternal or paternal	Unknown.
How many brothers and sisters has patient had?	Two.
Are living brothers and sisters (a) mentally and (b) physically normal?	Unknown.
Has mother or patient ever had any miscarriages or still-born children? If so, how many?	Unknown.

4. School Advantages and Progress

Has patient ever attended school, and how long?	Yes, 5 years.
With what success? Give grade attained in school	In 6th grade.

5. Practical Knowledge & General Information

Questions	Answers
Has the patient the practical knowledge of the usual and ordinary affairs of life equal to that of the average person of his age and opportunities?	No.

6. Social History and Moral Reaction

Is patient honest and truthful? If not, give particulars?	No.
Has patient ever been charged with or convicted of any crime? If so, give particulars	No.
Has patient ever been addicted to intemperance or known to be guilty of any moral delinquency?	Not intemperate but usual delinquent.
[fol. 25] Has patient ever confined in any reformatory, prison or place of detention for incorrigibility? Give circumstances and name of institution	No.
If married, has she conducted herself in a proper conjugal manner?	Single.
If female, has she ever borne illegitimate children?	No.

7. Economic Efficiency

What occupation has patient followed, and with what success?	Helping around house.
Has patient been self-sustaining? If not, by whom supported, and relation of such person to him?	By Mrs. J. F. Dobbs, no relation. Charlottesville, Va.
Of what work, if any, is patient mentally and physically capable of doing?	Helping around house.

8. Mental Examination

Questions	Answers
Has patient now or at any time had delusions, hallucinations or outbreaks of temper?	Some hallucinations and some outbreaks of temper.
Has patient ever attempted acts of violence to herself or others, or to their property?	No.
Can patient count as high as ten, and is she capable of feeding and dressing and keeping herself in a tidy condition?	Yes.
Has patient ever been an inmate of any institution for insane or mental defectives?	No.
Has patient ever been an inmate of any approved mental test? If so, give grade in mental years?	No.

[fol. 26] The Following Questions Must be Answered in Case of Every Epileptic

Questions	Answers
At what age did epilepsy first appear?	Since childhood.
Did patient have fits or spasms of any kind at that time?	No.
If no fits or spasms, how was it first manifested?	Feeble-minded.
What mental change has taken place in patient?	Feeble-minded.
Has patient been burned or otherwise injured during seizures?	No.
Has patient ever attempted to harm himself or others?	No.
Is the patient incapable of protecting himself against ordinary dangers without an attendant?	Capable.

The family physician, an approved mental examiner, or the one best acquainted with the family and the patient, is requested to fill out and sign the following certificate:

I, J. C. Coulter, citizen of Virginia, physician and practitioner in the city of Charlottesville, hereby certify that I have examined Carrie E. Buck and find that she is feeble-minded within the meaning of the law, and is a suitable subject for an institution for feeble-minded. The patient's bodily health is good and she has no contagious disorder.

J. C. Coulter, M. D. or Mental Examiner. P. O. Address: Charlottesville, Va. J. F. Williams, Medical Doctor. P. O. Address: Charlottesville, Va. (Seal.)

Alice Dobbs (Seal), J. T. Dobbs (Seal), Witnesses.

[fol. 27] Before Special Board of Directors of State Colony for Epileptics and Feeble-Minded

Findings and Adjudication of the Commission

Commonwealth of Virginia,
City of Charlottesville, To wit:

Whereas, Carrie E. Buck, who is suspected of being feeble-minded or epileptic, was this day brought before us, C. D. Shackleford, Justice of said county, and J. C. Coulter and J. F. Williams, two physicians (said J. C. Coulter being the physician of said suspected person) constituting a commission to inquire whether the said Carrie E. Buck be feeble-minded or epileptic and a suitable subject for an institution for the care, training and treatment of feeble-minded *of* epileptic persons; and whereas the Justice has read the warrant and fully explained the nature of the proceedings to the said suspected person, and we, the said physicians, have in the presence (as far as practicable) of the said justice, by personal examination of said Carrie E. Buck, suspected of being feeble-minded or epileptic, and, by inquiry and examination of witnesses, satisfied ourselves as to the mental condition of the said Carrie E. Buck, we the said justice and physicians, constituting the commission aforesaid, do decide that the said Carrie E. Buck is feeble-

minded, or epileptic, and ought to be confined in an institution for the feeble-minded, or epileptic.

Given under our hands this 23rd day of Jan., 1924.

Commission: C. D. Shackelford, Justice of Peace. J. C. Coulter, Medical Doctor. J. F. Williams, Medical Doctor.

I further certify that the said Carrie E. Buck was personally summoned and was actually present in Court at said hearing.

C. D. Shackelford.

[fol. 28] Before Special Board of Directors of State Colony for Epileptics and Feeble-Minded

Order of Commitment

Commonwealth of Virginia,
City of Charlottesville, Va., To wit:

To the Sergeant of the City of Charlottesville, Va., and to A. S. Priddy, the Superintendent of the State Colony for Epileptic and Feeble-Minded, at Madison Heights, Va., Greetings:

Whereas, I, C. D. Shackelford, a justice of said city of Charlottesville, Va., and J. C. Coulter and J. F. Williams, two physicians, the said J. C. Coulter being the physician to the said Carrie E. Buck, constituting a commission of inquiry, etc., into the mental condition of said Carrie E. Buck, have this day adjudged the said Carrie E. Buck to be feeble-minded and a suitable subject for an institution for the care and treatment of feeble-minded, and a citizen of this State, and without means of support, and no person appearing before me to give bond with sufficient security to be approved by me, payable to the Commonwealth, with condition to restrain and take proper care of the said feeble-minded person, without cost to the said Commonwealth, until the cause of confinement shall cease or the said feeble-minded person is delivered to the superintendent of the Colony for Epileptics and Feeble-Minded. I, C. D. Shackelford, do, in the same of said Commonwealth, command you, the said sergeant, to make provisions for the

suitable and proper care and custody of the said Carrie E. Buck; and you, the said superintendent of the Colony for Epileptics and Feeble-Minded, are hereby required to receive into the said colony, and into your care and charge, if there be a vacancy in the said colony, the said Carrie E. Buck to be treated and cared for as a feeble-minded person; and I do herewith transmit to you, the said superintendent of the Colony for Epileptics and Feeble-Minded, the interrogatories and answers thereto, taken by said commission, touching the mental condition of said Carrie E. Buck, and also the adjudication of the mental condition of the said Carrie E. Buck, a copy of each of which has this day been delivered by me to the clerk of the court of said city.

Given under my hand this 23rd day of January, 1924.

C. D. Shackelford, Justice of Peace.

[fol. 29] Before Special Board of Directors of State Colony for Epileptics and Feeble-Minded

Warrant and Return

No. —

State Colony for Epileptics and Feeble-Minded

Interrogatories and Papers of Commitment of —— ——

County (or City): Charlottesville, Virginia.
Date of commitment: January 23, 1924.
Railroad station at which patient is to be delivered: Charlottesville.
Patient under the charge of J. T. and Mrs. Alice Dobbs.
Post Office: Charlottesville, Grove Street.
Telegraph and telephone address: No telephone in residence.

Warrant

STATE OF VIRGINIA,
City of Charlottesville, To wit:

To J. T. Dobbs, Special Constable of the City of Charlottesville:

These are to command you that you do forthwith apprehend and bring before me for examination at my office in said City on the 23rd day of January, 1924, Carrie E. Buck, suspected of being feeble-minded or epileptic within the meaning of the law: And that you do summon her custodian, Mrs. Alice Dobbs, her parents or next friend, Frank Buck, her father, and Emma Buck, her mother.

Approved mental examiners Dr. J. F. Williams.

In the commitment of any person suspected of being feebleminded where it is possible to secure an approved examiner, he or she should be summoned as a witness to testify after making an approved mental test of the person.

And that you do further summon Dr. J. C. Coulter and Dr. J. F. Williams of ——, Approved Mental Examiners, who together with myself shall constitute a commission to determine whether or not the said Carrie E. Buck is feebleminded or epileptic, as alleged.

Given under my hand in the said City of Charlottesville, this the 23rd day of January, 1924.

C. D. Shackelford, Justice of the Peace of the City of Charlottesville.

A True Copy. Teste: C. D. Shackelford.

[fol. 30] Return

Executed the above warrant by producing the said Carrie E. Buck before the Justice therein named, at the time and place directed, and by summoning the two physicians, or the one physician and the Approved Mental Examiner and the witness named in said warrant, to appear at the time and place fixed therein, except Frank and Emma Buck, who were not found in my county or city.

J. T. Dobbs, Special Constable.

In the Court of the Honorable Charles D. Shackelford, Justice of the Peace and Judge of the Juvenile & Domestic Relations Court for the City of Charlottesville, Virginia

In the Matter of the Commitment of Carrie E. Buck, an Epileptic and Feeble-Minded Person

Petition

To the Honorable Charles D. Shackelford:

Your petitioners, J. T. Dobbs and Alice Dobbs, his wife, respectfully show unto your Honor that they are residents of the State of Virginia and the City of Charlottesville, residing now and for many years last past on Grove Street in said City.

That they have residing with them an epileptic and feeble-minded person, one Carrie E. Buck, a white female child of the age of seventeen years; that they have had the actual custody of said child since she was the age of three or four years, having received her from her mother, Mrs. Emmett, sometimes called Emma Buck, who is now, and for several years past had been, an inmate of the colony for the epileptic and feeble-minded near Lynchburg, Virginia.

Your petitioners show that the epileptic and feeble-minded symptoms in this child did not develop until she was ten or eleven years of age; that since that time she has become increasingly worse and is now so affected that they can no longer control or care for her, and that she is a fit subject to be placed in the State Colony for the Epileptic and Feeble-Minded.

[fol 31] Your petitioners further state that the financial and social standing of said girl is this, namely, that she is wholly dependent upon them for support; that your petitioners have cared for her as an act of kindness so long as they were able; that your petitioners, J. T. Dobbs is employed on monthly wages, and that he and his wife are no longer able to care for said girl financially, or to be responsible for her safe control.

Petitioners further show that, as above stated, her mother is, and for a number of years has been, an inmate of the

State Colony for Feeble-Minded, and that the whereabouts of her father, whose name is Frank Buck, or whether he be living or dead, are to your petitioners unknown; that they know nothing about the said Frank Buck beyond the fact that his name is, or was, Frank Buck.

Your petitioners pray that process may be issued against all proper parties, that the said Carrie E. Buck be brought before your Honor, that a hearing may be had as required by law, that all proper proceedings be complied with, and that the said Carrie E. Buck be adjudged an epileptic and feeble-minded person and committed to the State Colony for persons of that character.

And as in duty bound your petitioners will ever pray, etc.

J. T. Dobbs, Alice Dobbs.

STATE OF VIRGINIA,
City of Charlottesville, To wit:

Subscribed and sworn to before me, Charles D. Shackelford, Justice of the Peace and Judge of the Juvenile & Domestic Relations Court of the City of Charlottesville.

C. D. Shackelford.

A True copy. Teste: C. D. Shackelford.

[fol. 32] IN CIRCUIT COURT OF AMHERST COUNTY

In Vacation of the Circuit Court of the County of Amherst, on the 21st Day of July, 1924

ORDER APPOINTING GUARDIAN

Upon the application in writing of Dr. A. S. Priddy, Superintendent of the State Colony for Epileptics and Feeble-Minded, which institution is situated in the County of Amherst, for the appointment of some suitable person to act as guardian of Carrie Buck, an inmate of said institution, whom it is proposed to sterilize under the provisions of Chapter 394 of the Acts of the General Assembly of Virginia of 1924; and it appearing that the said Carrie E. Buck has no legal guardian or committee, the undersigned, Judge of the Circuit Court of the County of Amherst, doth hereby appoint Robert G. Shelton to act as guardian of

the said Carrie Buck during and for the purposes of the proceedings for her sterilization as aforesaid, to defend her rights and interests, as provided by said statute.

And it is ordered that the said guardian be paid by said institution a fee of $5.00 per day for each day actually engaged in discharging his duty as such guardian, not to exceed in the aggregate $15.00.

Bennett T. Gordon, Judge.

To the clerk of the Circuit Court of Amherst County, Virginia.

A copy. Teste: W. E. Sandidge, Clerk.

In Circuit Court of Amherst County

Statement of Evidence Before Board of Directors

Caption

Oral evidence taken before the Special Board of Directors of the State Colony for Epileptics and Feeble-Minded, at the said institution, on September 10, 1924, in the hearing upon the petitioner, A. S. Priddy, Superintendent, against Carrie Buck.

Present: Aubrey E. Strode, Attorney for said Board; the said Carrie Buck in person; and R. G. Shelton, Esq., guardian for the said Carrie Buck; and all the members of the said Board.

The witness, Dr A. S. Priddy, being duly sworn by the Chairman of the Board, testified as follows:

[fol. 33] *First* Question by Mr. Strode:

Q. Please state your connection with the State Colony for Epileptics and Feeble-Minded and very briefly what experience you have had in the care and treatment of defective persons?

A. For ten years I have been Superintendent of the State Colony for Epileptics and Feeble-Minded, one department of which is for mentally defective female patients, more

than 600 of which I have observed and treated within the past ten years. I was for a period of about five years First Assistant Physician and Superintendent of the Southwestern State Hosptial for the Insane at Marion, Va.

Q. It appears you have verified the petition filed in this case and I should be glad if you will state to the Board a little more fully the facts in regard to the patient Carrie Buck, taking into account both your personal observation of her and your knowledge of her history and the experience with observed cases of similar cases that lead you to the opinion that both she and society would be benefited by sterilization.

A. I have had Carrie Buck under observation and care in the Colony since the date of her admission June 4, 1924, and from psychological examination and the Stanford revision of the Binet-Simon mental test, I have ascertained that she is feebleminded of the lowest grade Moron class. Her mental age is 9 years or of the average normal child at 9 years, and her chronological age is 18 years her last birthday. The sworn history of her case as shown in the depositions constituting a part of the commitment papers is that she is of unknown paternity, her mother Emma Buck is and has been for several years a feebleminded patient in the Colony of low mental grade. According to the depositions Carrie Buck has had one illegitimate mentally defective child; she is a moral delinquent but physically capable of earning her own living if protected against childbearing by sterilization. Otherwise she would have to remain under custody in an institution for mental defectives during the period of her child-bearing potentiality covering thirty years. The history of all such cases in which mental defectiveness, insanity and epilepsy develop in two generations of feeble-minded persons is that the baneful effects of heredity will be shown in descendants of all future generations. Should she be protected against child-bearing by the simple and comparatively harmless operation of Salpingectomy she could leave the institution, enjoy her liberty and life and become self-sustaining.

[fol. 34] Q. Taking into consideration all of your knowledge of this patient is it your opinion that it would be better both for her and for society if she be rendered incapable of childbearing in the way suggested?

A. I am of the firm belief and opinion that to prevent Carrie Buck bearing offspring is a duty to her and society.

Q. What support in the general medical opinion of the present day has your opinion in this regard?

A. The teaching and experience of all authorities on mental defectiveness, sterpicultura and heredity are the basis for my belief.

Cross-examination.

By R. G. Shelton, guardian for Carrie Buck:

Q. Doctor, what assurance can you give that the operation suggested by you in this case will not be dangerous to the health or even the life of Carrie Buck?

A. I have performed and assisted in the performance of between 80 and 100 operations on female patients in this institution for pelvic disease involving the removal of diseased tubes which necessarily involved sterilization which is a more radical operation in that the tubes themselves are removed, than Salpingectomy performed on sound tubes for sterilization, which is simply a division and ligating the Fal-opian tubes, without any serious consequences whatever. Patients as a rule leave their beds in from two to three weeks and none of their womanly functions are in the least impaired except that of conception and procreation. The operation of Salpingectomy is as harmless as any surgical operation can be, and not a single death has occurred in any of the cases so operated on.

Q. Might not this girl Carrie Buck by some course of proper training in your institution and without this operation be brought to such sense of responsibility as that she might be restored to society without constraint and harmful effects both to herself and society?

A. This would be an impossibility, as in her mental defectiveness, self-control and moral conception are organically lacking and cannot be supplied by teaching or training, she being congentially and incurably defective.

Q. If this operation be not performed do you know of any other way in which this patient might be restored to [fol. 35] society and possibly become self-supporting without being immoral and without harm to herself and society?

A. I do not.

Q. Are we to understand that unless this girl is so operated upon it is likely that both for her protection and the protection of society she must be kept in custody and confinement until her child-bearing age is past?

A. It is necessary that she be kept under custody in an institution during the period of childbearing.

And further this deponent saith not.

A. S. Priddy.

Question asked of Carrie Buck by Mr. Strode:

Q. Do you care to say anything about having this operation performed on you?

A. No, sir, I have not, it is up to my people.

There was also introduced in evidence before the Board the commitment papers of the patient, Carrie Buck.

BEFORE THE SPECIAL BOARD OF DIRECTORS OF THE STATE COLONY FOR EPILEPTICS AND FEEBLEMINDED

[Title omitted]

ORDER OF BOARD OF SPECIAL DIRECTORS

Upon the petition of A. S. Priddy, Superintendent of State Colony for Epileptics and Feebleminded, which was presented to this Special Board of Directors of the said institution, at its place of meeting in the said institution, at Colony P. O., Va., in said institution on Sept. 10, 1924, and it appearing that notice of the presentation of the said petition, with a copy of the said petition, was duly served upon the said Carrie Buck on the 9th day of August, 1924, with a notice designating the said time and place for the presentation of such petition, and that copy of the said notice and petition was likewise served upon Emma Buck, mother of the said Carrie Buck, more than thirty days before this date on, to-wit, the 9th day of August, 1924, and [fol. 36] that likewise a copy of the said notice and petition was so served upon R. G. Shelton, duly appointed by the Circuit Court of Amherst County, Virginia, by order dated 24th day of July, 1924, to act as guardian of the said Carrie

Buck during and for the purposes of these proceedings to defend her rights and interests as provided by the statute for the sexual sterilization of inmates of this institution in certain cases, and that the said Carrie Buck has no other legal guardian or committee known to the said Superintendent, and the said R. G. Shelton, Guardian, being present in person throughout the hearing;

And it further appearing that the said Carrie Buck has had opportunity and leave to attend this hearing in person as desired by her and as requested by her said guardian, and she being present in person before the said Special Board at this hearing;

And this said Special Board of Directors having heard and directed the keeping with its records of all record evidence offered at such hearing and having reduced to writing, in duplicate, all the oral evidence heard upon this matter, which is ordered to be kept with its records;

This Special Board of Directors finds that the said Carrie Buck is a feeble minded inmate of this institution and by the laws of heredity is the probable potential parent of socially inadequate offspring, likewise afflicted, that she may be sexually sterilized without detriment to her general health, and that the welfare of the said Carrie Buck and of society will be promoted by such sterilization;

Upon consideration whereof, this said Special Board of Directors of the State Colony for Epileptics and Feebleminded hereby orders that the said petitioner, A. S. Priddy, Superintendent of this institution, perform or have performed by Dr. J. H. Bell, a competent and capable physician, after not less than 30 days from the date of this order, the operation of Salpingectomy upon the said Carrie Buck.

It further appearing to this Special Board that Ro. G. Shelton, guardian as aforesaid, has been actually engaged in discharging his duty as such guardian for one day, on account whereof the proper officers of this institution are hereby directed to pay the said R. G. Shelton at the rate of Five Dollars ($5.00) per day not to exceed in the aggregate Fifteen Dollars ($15.00), for his services as fixed by the aforesaid order of court.

S. L. Ferguson, Chairman Special Board. H. M. Davis, Geo. H. Bowles.

[fol. 37] I, the undersigned S. L. Ferguson, Chairman of the Board of Directors of the Virginia State Epileptic Colony for Epileptics and Feebleminded, situated in Amherst County, near Lynchburg, Virginia, do hereby certify that the foregoing is a true copy of the records in the sterilization proceedings in the case of A. S. Priddy, Superintendent of said institution, v. Carrie Buck.

Given under my hand this the 30th day of September, 1924.

S. L. Ferguson, Chairman.

Duly sworn to by S. L. Ferguson. Jurat omitted in printing.

A copy. Teste: W. E. Sandidge, Clerk.

In Circuit Court of Amherst County

Interrogatories to H. H. Laughlin

The undersigned Aubrey E. Strode, attorney for A. S. Priddy, Superintendent, and I. P. Whitehead, attorney for Robert Shelton, guardian and next friend of Carrie Buck, in the above entitled proceedings, hereby agree that the following interrogatories may be propounded to H. H. Laughlin at Cold Spring Harbor, Long Island, New York, [fol. 38] the answers thereto to be read in evidence in the above entitled proceedings, in behalf of A. S. Priddy, Superintendent:

First Interrogatory: Please state your name, residence, and occupation.

Second Interrogatory: Please give a brief outline of your service and experience in connection with the science of eugenics.

Third Interrogatory: Reciting the facts recently supplied to you by Superintendent A. S. Priddy, of the State Colony for Epileptics and Feebleminded near Lynchburg, Va., please give a short analysis of the hereditary nature of Carrie Buck, the defendant in this case.

Fourth Interrogatory: Bearing in mind that this is a proceeding in which may be tesetd the power of the Commonwealth of Virginia through its Hospital Boards acting under 1924 act of its General Assembly providing for the sterilization of inmates of State institutions in certain cases, approved March 20, 1924 (Acts 1924, page 569), please give in brief outline the results of scientific investigations tending to show that feeblemindedness is likely to be transmitted to offspring from a feebleminded parent, using such illustration as you may think proper from families that have been investigated through a period of years and filing with your deposition, if you conveniently can do so, any printed or otherwise prepared family charts showing the history of somewhat similar cases.

Fifth Interrogatory: In view of your experience, observation and study of the subject, please state the conclusions you have reached as to the beneficial results both to the patient and to society in general that would be likely to follow from the operations of the Virginia statute in question.

Sixth Interrogatory: Please give any other information or testimony in regard to the general subject that your interest therein may indicate and which you think might be helpful to the Court in passing upon the questions of public policy and other questions involved in this proceeding.

Agreed to.

Aubrey E. Strode, Attorney for A. S. Priddy, Superintendent. I. P. Whitehead, Attorney for Robert Shelton, Guardian and Next Friend of Carrie Buck.

[fol. 39] Consent to the taking of the above interrogatories is given with the understanding that we do not waive our right to object to the materiality, competency, or legality of the evidence sought to be obtained.

I. P. Whitehead, Atty. for Robert Shelton, Guardian, &c.

IN CIRCUIT COURT OF AMHERST COUNTY

[Title omitted]

The deposition of H. H. Laughlin, taken before me, George H. Claflin, a notary public for the county of Nassau, Long Island, in the State of New York, pursuant to the agreed interrogatories hereto annexed, at Eugenics Records Office, Cold Spring Harbor, Long Island, New York, on the 6th day of November, 1924, to be read as evidence on behalf of A. S. Priddy, Superintendent, in certain proceedings depending in the Circuit Court of Amherst County, in the State of Virginia, wherein A. S. Priddy, Superintendent, is plaintiff, and Carrie Buck is defendant.

The witness, H. H. LAUGHLIN, being duy sworn, deposes as follows:

First interrogatory.—Answer. My name is Harry H. McLaughlin. My residence is Cold Spring Harbor, Long, Isand, N. Y., and my occupation is Assistant Director of the Eugenics Record Office of the Carnegie Institution of Washington.

Second interrogatory.—Answer. I have been in immediate charge of the Eugenics Record Office (located at Cold Spring Harbor) since its organization in 1910. Until 1918 this office was an independent scientific establishment maintained by Mrs. E. H. Harriman of New York. In 1918 it was taken over by the Carnegie Institution of Washington. I have been in charge of the annual Training Corps of this office for scientific field workers in eugenics since the first [fol. 40] meeting of the Corps in 1910. All together, about 250 persons have received this training. Since April 17, 1920, I have been Expert Eugenics Agent for the Committee on Immigration and Naturalization of the House of Representatives. Since 1922 I have been Eugenics Associate of the Psychopathic Laboratory of the Municipal Court of Chicago, and in the latter capacity I published a book of 502 pages, entitled Eugenical Sterilization in the United States. This book covered critically the legal, legislative, judicial, biological, statistical, and eugenical aspects of the problem.

Third interrogatory.—Answer. In accordance with the third interrogatory, I submit herewith a short analysis of the hereditary nature of Carrie Buck.

(5 8½ x 11-in. sheets following.)

Short Analysis of the Hereditary Nature of Carrie Buck

1. Facts.—Granting the truth of the following facts which were supplied by Superintendent A. S. Priddy of the State Colony for Epileptics and Feeble-minded, Lynchburg, Va.:

(a) Propositus.—"Carrie Buck: Mental defectiveness evidenced by failure of mental development, having a chronological age of 18 yrs., with a mental age of 9 yrs., according to Stanford Revision of Binet-Simon Test; and of social and economic inadequacy; has record during life of immorality, prostitution, and untruthfulness; has never been self-sustaining; has had one illegitimate child, now about six months old and supposed to be mental defective. Carrie Buck has been duly and legally declared to be feeble-minded within the meaning of the laws of Virginia and was committed to the State Colony for Epileptics and Feeble-minded, where she now is on, June 4, 1924. Date of Birth July 2, 1906; place of birth, Charlottesville, Va.; present address, Colony, Va."

(b) Mother of Propositus.—"Emma Buck, maiden name, Emma Harlow: Mental defectiveness evidenced by failure of mental development, having a chronological age fifty-two years, with a mental age, according to Stanford Revision of Binet-Simon Test, of seven years and eleven months (7 yrs. 11 mos.); and of social and economic inadequacy. Has record during life of immorality, prostitution and untruthfulness; has never been self-sustaining, was maritally unworthy; having been divorced from her husband on account of infidelity; has had record of prostitution and [fol. 41] syphillis; has had one illegitimate child and probably two others inclusive of Carrie Buck, a feeble-minded patient in the State Colony (Va.). Date of birth, Nov. 18, 1872; place of birth, Charlottesville, Va."

(c) Family History.—"These people belong to the shiftless, ignorant, and worthless class of anti-social whites of the South. She (the propositus) has a sister and two half-

brothers, whose paternal parentage cannot be determined. The same traits are shown in the daughter, Carrie Buck, whose chronological age is 18 yrs.; her mental age by B-S Test is only 9 yrs. She has life-long record of moral delinquency and has borne one illegitimate child, considered feebleminded. (According to depositions of the Red Cross nurse, Miss Caroline E. Wilhelm, of Charlottesville, Va., in the proceeding committing Carrie Buck to the State Colony, Carrie Buck's illegitimate baby gave evidence of mental defectiveness at an early age.)" "* * * this girl comes from a shiftless, ignorant, and moving class of people, and it is impossible to get intelligent and satisfactory data, though I have had Miss Wilhelm, of the Red Cross of Charlottesville, try to work out their line. We have several Bucks and Harlows, but on investigation it is denied that they are any kin to the Harlows; the material grandfather of Carrie Buck, and there is considerable doubt as to her being a "Buck," but the line of baneful heredity seems conclusive and unbroken on the side of her mother (Harlow), but all the Bucks and Harlows, we have here, descend from the Bucks and Harlows of Albemarle County, in which the City of Charlottesville and the University of Virginia are located, and I believe they are of the same stock. She (the propositus) has two or three half-brothers and sisters, but at an early age they were taken from the custody of their mother and legally adopted by people not related to them. All that I can learn about Emma Buck's father, Richard Harlow, the grandfather of Carrie, was (that he) died from spinal trouble. Carrie Buck, when four years old was adopted by Mrs. J. T. Dobbs of Charlottesville, who kept her until her moral delinquencies culminated in the illegitimate birth of a child referred to. She attended sch*o*ol five years and attained the 6th grade; she was fairly helpful in the domestic work of the household under strict supervision; so far as I understand, there was no physical development, or mental trouble attended her early years. She is well grown, has rather badly formed face; of a sensual emotional reaction, with a mental age of nine years; is incapable of self-support and restraint except under strict supervision.

II. Analysis of Facts.—Generally feeblemindedness is caused by the inheritance of degenerate qualities; but some-

[fol. 42] times it may be caused by environmental factors which are not hereditary. In the case given, the evidence points strongly toward the feeblemindedness and moral delinquency of Carrie Buck being due, primarily, to inheritance and not to environment. We have, in the files of the Eugenics Record Office, many cases in which a single feebleminded child appears in an apparently normal family and a pedigree analysis shows no clue to hereditary cause, but if the same mother has more than one feebleminded child, then, even in the absence of a more detailed pedigree record, the evidence weighs very heavily against the primary cause being environmental, and further, when the mother, herself, is feebleminded and has more than one feebleminded child, the evidence is overwhelmingly in favor of the cause of feeblemindedness being due primarily, to inheritance and not to environment. Further evidence of the hereditary nature of Carrie Buck's feeblemindedness and moral delinquency consists in the fact that at the very early age of four years she was taken from the bad environment furnished by her mother and given a better environment by her adopted mother, Mrs. J. T. Dobbs, of Charlottesville, Va. It appears from the statements of the field investigator and of the Superintendent of the State Colony, that Carrie Buck, under the better environmental conditions, was able to attain only to the 6th grade in school and was able to be fairly helpful in domestic work under strict supervision, and that at the age of 18, she showed a mental age of 9, and was sexually very immoral, and finally bore an illegitimate child. All this is a typical picture of a low-grade moron. The facts about Carrie Buck being an individually feebleminded person are sustained by her history and her formal and legal commitment to the State colony for Epileptics and Feebleminded. The question is whether her own heredity is such that her children would become assets of debits to the future population of the State. From the evidence of her mother's feeblemindedness and moral delinquency, and of her own clearly demonstrated feble-minded character and of the chances of Carrie Buck being a feebleminded person through environmental and non-heredity causes, are exceptionally remote.

The fact that she has already borne a child demonstrates her to be a potential parent. The family history record and the individual case histories, if true, demonstrate the

heredity nature of the feeblemindedness and moral delinquency described in Carrie Buck. She is therefore a potential parent of socially inadequate or defective offspring.

Fourth interrogatory.—Answer: (a) In Chapter VIII of Eugenical Sterilization in the United States by H. H. Laughlin, pages 291-320, is given "Case and Family His- [fol. 43] tories of Individual Subjects of Litigation Growing out of the Several Eugenical Sterilization Laws." In this chapter I have analyzed, so far as data would permit, the hereditary nature of the particular social inadequacy from which the subject of the particular test case was suffering. This chapter contains pedigree charts and other analytical data, and demonstrates, beyond a reasonable doubt, that in all eight cases the particular inadequacy was inborn.

(b) I submit herewith Bulletin No. 1 of the Eugenics Record Office, by Henry H. Goddard, on the subject, "Heredity of Feeblemindedness." This bulletin of 14 pages contains 15 pedigree charts showing the family distribution of feeblemindedness in these families, and demonstrating the hereditary nature of the defect. At the time of preparing this bulletin, namely, in 1911, Dr. Goddard was the director of the scientific studies then being conducted in feeblemindedness by the Training School.

Let me say, also, that in the archives of the Eugenics Record Office there are many hundreds of manuscript pedigrees of families with feebleminded members. These pedigrees prove conclusively that both feeblemindedness and other intelligence levels are, in most cases accounted for by hereditary qualities.

(Booklet No. 1, pages Nos. 52 to 67, inclusive, withdrawn by consent of counsel.)

(c) I submit herewith the galley proof for a paper entitled "Segregation versus Sterilization," which paper will be printed in an early number of the "Eugenical News" (which is the official organ of the Eugenics Research Association, Cold Spring Harbor, Long Island, N. Y.). This paper gives the arguments persented before the 91st annual meeting of the British Medical Association, both for and against sterilization.

Segregation Versus Sterilization

At the 91st annual meeting of the British Medical Association, Section of Medical Sociology, problems of mental deficiency, in relation to segregation and sterilization were discussed. (British Medical Journal, August 11, 1923.)

[fol. 44] (1) Dr. Wm. A. Potts treated the subject of "Mental Deficiency in Its Social Aspect." (Pp. 219-221.) He said that while heredity was the principal cause of mental deficiency and accordingly segregation would reduce the number of mental defectives, heredity was not the only cause and segregation alone would not solve the problem, but all unfavorable factors such as racial poisons, infectious disease of the mother during pregnancy, toxins, and bad environment must be eliminated as far as possible. He attached much importance to the ante natal clinic and the school clinic, which should deal with the psychological as well as the physical make-up of the child. He said that sterilization had always appeared to him an irrational procedure since after sterilization the defective must still be segregated "because he is a menace to society in other ways than breeding degenerates. The sterilized delinquent will go on stealing and giving trouble to the police. Feeble-minded young women could not be sterilized and then turned loose to spread venereal disease broadcast."

(2) Mrs. Ellen F. Pinsent reviewed "Results of the Mental Deficiency Act," especially in regard to the 'unity and continuity of care and control' aimed at by the Royal Committee on Care and Control of Feeble-minded. She concluded that, partly "as a result of the war and consequent financial restrictions" hardly more than a beginning has been made in securing the desired care and control of the mentally deficient.

(3) Dr. Henry Devine spoke on "Segregation of Mental Defectives." (Pp. 224-226.) He considered the question as to how far it is possible to segregate individuals with mental weakness with a view to preventing the propagation of the unfit. He seemed to feel that if general segregation for eugenic reasons were undertaken there would be no limit to the number of institutions required, and that therefore "just as we certify the insane because they behave ab-

normally, so we should content ourselves with segregating those defectives who are unable to care for themselves or who exhibit antisocial propensities. We do not segregate, and obviously cannot segregate, the psychotic or the feeble-minded because they may produce inferior offspring, but because of their behaviour."

[fol. 45] (4) Dr. R. A. Gibbons spoke on "Sterilization of Mental Defectives." (Pp. 226-228.)

Statistics show mental deficiency on the increase in spite of the fact that the Mental Deficiency Act has been in operation for ten years. The cause of this increase is heredity. Two-thirds of all feeble-mindedness is due to heredity. By the Mental Deficiency Act defective children are included over the age of 7 and up to the age of 16. During this period the child can be studied and if at the age of 16 "there be no indication that the child can ever be looked upon as normal or approaching to normal, then," in Dr. Gibbon's opinion, "steps ought to be taken to prevent that child ever becoming a parent, for it is certain that the offspring would be defective."

If the plan of sterilizing all children who have reached the age of 16 and have given evidence that they can never become normal were followed it would soon be unnecessary to sterilize adults, but until that time is reached Dr. Gibbons suggests a state certificate of marriage, because not until the adult defective contemplates marriage would the necessity for sterilization arise. In the event of venereal disease or tuberculosis being discovered, postponement of marriage could be adopted. "But in case of a feeble-minded man or woman, or those having such a family history of insanity as would render in the highest degree probable mentally defective children, one or both could be sterilized before granting a certificate."

Dr. Gibbons maintains "that by sterilization which does not change the life of the individual in the slightest degree, we can get rid of this class, the mentally deficient) almost entirely. * * *"

Segregation does not answer the purpose because it is necessary to deal with many who are not segregated.

(5) Sir Frederick Mott spoke on "Heredity and Social Conditions Among the Mentally Defective." (Pp. 230-231.)

"Personally he was not disposed to think that sterilization was advisable for this reason, that the people who were sterilized were not made in any respect better able to compete with their fellows. They would still want care and supervision just the same after sterilization as before. He [fol. 46] agreed * * * that many of these persons could be made useful members of the community if taught properly to use their hands."

(6) Dr. Joseph F. E. Prideaux (pp. 231-232) put forward certain objections to the policy of sterilization. First of all are the enormous difficulties in deciding who was to be sterilized, and "the only persons whom they could with any absolute certainty at the present time decide to be fit cases for sterilization were just those persons who would need segregation also on account of their asocial tendencies." According to figures given 10 per cent of the population were carriers of mental defect and would have to be sterilized.

At present in England and Wales there was accommodation in special schools for 16,266 mentally deficient children, while the Board of Education had ascertained the number of deficient children to be 31,000—a figure which Dr. Prideaux believed much too low.

(7) Sir Joseph Verco (South Australia) spoke of the need for special education, vocational training and necessary supervision, "either by segregation in an institution or by special and continuous oversight in their homes or their workshops or both * * * He was not pursuaded as to the desirability of sterilization, and he thought this method should not be performed until such continuous care and supervision as he had spoken of had been given a full trial."

(8) Mrs. C. B. S. Hodson (Eugenics Education Society) agreed that "today we were preserving and propagating mental defectives." However, she thought that Dr. Prideaux's objection to sterilization on the ground that today 10 per cent of the community would require to be sterilized was not valid, because if, "in order to purify the race the sterilization or segregation of 10 per cent of the community was necessary today, what percentage of the community would require to be sterilized or segregated two generations hence, if we took no effective purging measure now?"

(d) I submit also a short editorial on the English memorandum (above listed as item (c) of the fourth interroga-
[fol. 47] tory), which editorial is entitled "Purging the Race" and will appear in the same number of the Eugenical News in which the above article (item c) will be printed.

Purging the Race

In the present issue of the Eugenical News (pp. —) there appears, under the title "Segregation versus Sterilization," a digest of several papers read at the 91st annual meeting of the British Medical Association in the British Medical Association in the Section of Medical Sociology. These papers show clearly, first, that the persons responsible for handling the subject in England at the present time feel that both heredity and invironment are vital factors in the cause of mental deficiency. On author, Dr. R. A. Gibbons, suggested the proportion two thirds due to heredity. But in the matter of treatment, differences of opinion stand out more clearly. One group seems inclined to treat the immediate social and economic aspect, and another to be more interested in treating causes more radically and paying relatively less attention to present-day results.

There seems to be agreement that although the Mental Deficiency Act has been in force for ten years in England, there is still an increase in feeble-mindedness. For the principal remedial measures, the tendencies appeared to favor segregation over sterilization, but, at the same time, to recognize the economic impossibility of complete segregation. The immensity of the problem and the inchoate conditions of the solution were generally agreed upon, and, finally, more research was deemed essential.

(e) I would call your attention also to Chapter X of the above referred to book entitled "Eugenical Sterilization in the United States." This chapter discusses "the right of the state to limit human reproduction in the interests of race betterment."

Fifth Interrogatory.—Answer. (a) Effect of Eugenical Sterilization on the Individual. Vasectomy in the male and salpingectomy in the female have but little physiological effect other than sexual sterility. The more radical opera-
[fol. 48] tions, namely, castration in the male and cophorec-

tomy in the female have much more profound physiological effects, and should therefore be used only as the result of the medical indication for physiological or mental therapy, in addition to sexual sterility.

So far as effectiveness of eugenical sterilization is concerned, the physiologically less radical operations, vasectomy and salpingectomy, are as effective as the physiologically more radical ones. The factors which enter into the determination of the type of operation and in predicting its outcome are dependent upon sex, age, constitutional make-up, physiological, pathological and mental condition of the subject. If eugenical sterilization is indicated, a physiologically harmless type of operation can be found for the patient, and oftentimes a physiologically beneficial operation can be found.

(b) Eugenical Effects of the Law.—Because sexually fertile individuals, who are socially inadequate because of feeblemindedness of other constitutional defect, cannot obey laws in relation to marriage and reproduction, such persons must be guarded by the state against reproduction—that is, it must be made physically impossible for the inadequates to bear offspring. This may be achieved by either of two means: first, segregation in a modern institution in which the inmate is guarded against sexual intercourse, and second, eugenical sterilization of the particular inadequate.

Modern individual and family history study can, in practically all cases of social inadequacy, locate the heredity factor, if it exists. Thus if a particular person is a "potential parent of degenerates," the eugenical field worker can generally supply the state authorities with material for a sound diagnosis.

The administrative and institutional forces in any state, upon whom devolves the responsibility for caring for inadequate individuals, and in preventing race degeneracy by the reproduction of hereditary inadequates, require authority to segregate or to sterilize inadequate individuals, under proper legal regulations, if the state is to prevent race degeneracy.

Modern eugenical sterilization is a force for the mitigation of race degeneracy which, if properly used, is safe and effective. I have come to this conclusion after a thorough

study of the legal, biological and eugenical aspects, and the practical working out, of all of the sterilization laws which have been enacted by the several states up to the present time.

[fol. 49] Sixth Interrogatory.—Answer. I would submit Chapter XV of Eugenical Sterilization in the United States, entitled "Legal, Biological and Practical Requirements for an Effective Eugenical Sterilization Law." In this chapter I have considered the matter of eugenical sterilization and public policy, and have examined critically each of the commonly stated objections to the existing laws, and have also outlined the principles which should be incorporated in an eugenical sterilization law, if such law is to function in the expected direction, namely, in safeguarding the inadequate individual, and in protecting the state against the increase of hereditary degeneracy.

I believe that the Virginia statute is, in the main, one of the best laws thus far enacted in that it has avoided the principal eugenical and legal defects of previous statutes, and has incorporated into it the most effective eugenical features and the soundest legal principles of previous laws.

And further this deponent saith not.

Harry H. Laughlin.

State of New York,
County of Nassau,
Long Island, To wit:

I, George H. Claflin, a Notary Public for the County of Nassau, Long Island, in the State of New York, do hereby certify that the foregoing deposition of H. H. Laughlin was duly taken, reduced to writing and signed by the said witness, respectively, before me at the place and time therein mentioned pursuant to the annexed agreed interrogatories.

In witness whereof, I have hereunto set my hand and affixed my official seat at Cold Spring Harbor, Long Island, New York, this 6th day of November, 1924.

George H. Claflin, Notary Public, Suffolk Co. Cer-
[fol. 50] tificate filed in Nassau Co. (Notarial Seal.)

A copy. Teste: W. E. Sandidge, Clerk.

Index.

VIRGINIA:

IN CIRCUIT COURT OF AMHERST COUNTY

[Title omitted]

Statement of Evidence—November 18, 1924

APPEARANCES OF COUNSEL

I. P. Whitehead, Esq., counsel for plaintiff.
Col. A. E. Strode, counsel for defendant.

Hearing on Appeal from an Order of the Special Board of Directors of the State Colony for Epileptics and Feebleminded Ordering the said Carrie Buck to be Sterilized.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Whitehead: Have the record show that the appellant (Mr. Shelton) is present. I want the record to show that the parties are all here.

(Mr. Shelton's appearance is noted.)

[fol. 51] Col. Strode: If your Honor please, we have a number of witnesses here from a distance, including from the counties of Albemarle and Charlottesville, where this girl came from, and while it would not be done ordinarily, I am going to put them on first in order to allow them to get through and leave for their homes.

The Court: All right, sir.

Col. Strode: I am going to ask that the witnesses be excluded, except Dr. De Jarnett.

(Witnesses are excluded with exception of Dr. De Jarnett.)

Mrs. ANNE HARRIS, a witnes of lawful age, having been first duly sworn, testified as follows:

Direct examination.

By Col. Strode:

Q. Mrs. Harris, where do you live?
A. Charlottesville, Va.
Q. Are you engaged in any work there?

A. Yes, sir, I was District Nurse there for eleven years.
Q. You were District Nurse there for eleven years?
A. Yes, sir.
Q. Do you know Carrie Buck?
A. Yes, sir.
Q. The girl involved in this proceeding?
A. Yes, sir.
Q. How long have you known her?
A. Well, I have known her for probably twelve years.
Q. Do you know her mother, Emma Buck?
A. Yes, sir.
Q. How long have you known her?
A. The same length of time.
Q. What do you know about them, Mrs. Harris?
A. Well, I know——

[fol. 52] Mr. Whitehead (interrupting): Wait a minute, right there is what I think is one of the important features. I am not objecting right now, but I think I will ask later to strike that out because I think that question violates the constitutional right of the defendant.

A. Well, I know that Emma Buck, Carrie Buck's mother, was on the charity list for a number of years, off and on—mostly on; that she was living in the worst neighborhoods, and that she was not able to, or would not, work and support her children, and that they were on the streets more or less.

Q. Do you know any other of the children of Emma Buck besides Carrie?

A. I know a small child, Doris—a girl.

Q. Mrs. Harris, we want to make this as brief as possible, but at the same time, we do want the facts. You have given a very clear-cut and exceedingly short account of these people—Could not you elaborate it in any way? Cannot you tell us more facts about Emma and Carrie? What sort of people were they?

A. Well, Emma was absolutely irresponsible. She did not have any idea of providing for herself and children. She was literally on the streets with her children, and the numerous charity organizations worked for her at different times, but all that was done for her was to give her relief.

Q. Can't you tell us what the trouble was with her?

A. Well, she didn't seem to be able to take care of herself. She would not work. She had these children, and she was not living with her children and she did not take care of them or herself.

Q. You speak of her not living with her husband: did she continue to have children in spite of that fact?

A. Yes, sir.

Q. Were they her husband's children?

A. No, sir, no question of them being her husband's.

Q. Are you acquainted with the term used in this statute, "the socially inadequate person?"

A. Yes, sir.

Q. What is your idea of that term?

A. A person who is not able to take care of themselves—who is irresponsible mentally.

Q. Now, you say she is irresponsible mentally?

[fol. 53] A. Yes, she is not mentally able to do things or to judge for herself.

Q. But physically able to bear children?

A. Yes, sir, and to work for her living, but mentally unable to do so.

Q. What about the character of her off-spring? I am speaking of Emma now? Do you know anything of the character of her off-spring?

A. Well, I don't know anything very definite about the children, except they don't seem to be able to do any more than their mother.

Q. Well, that is the crux of this matter. Are they mentally normal children?

A. No sir, they are certainly not.

Q. Emma herself was not normal, and they are not?

A. No sir.

Q. We have not yet used the term "feeble-minded;" I was hoping you might get to it yourself. Are you acquainted with that term?

A. Yes, sir.

Q. I wish you would state whether or not Emma or any of her children were feeble-minded?

A. I would say Emma had the mentality of a child of twelve.

Q. That is the mother of these children?

A. Yes, sir, and the children less than that—certainly of a child four or five years younger than her age.

Q. Now, you said that you knew Doris?

A. Yes, sir.

Q. Was she a full sister of Carrie?

A. I should say not, just from hearsay. I don't know definitely, but I should say not, from general reports.

Q. What was her relationship to Carrie?

A. Well, she was Carrie's half-sister; same mother but not the same father.

Q. What do you know about Doris?

A. Well, she was a very stormy individual. She was a very violent child. She ruled her mother before she was placed in the children's home. She was with some people in the country, and they had a very stormy time with her, and they could not do anything with her. She had an ungovernable temper. She was incorrigible.

Mr. Whitehead: Without waiving my right to move to strike out all of it, I ask two or three questions.

[fol. 54] Cross-examination.

By Mr. Whitehead:

Q. Mrs. Harris, you speak of Doris: Doris is a half-sister of the girl that is here, Carrie Buck?

A. Yes, sir, supposed to be.

Q. Now, of course you don't know whether she is a half-sister or not, do you?

A. No, sir, I don't know who the child's father was.

Q. The record that you have given of the mother, Emma Buck, that is made up on what you have heard, largely?

A. No, sir, I had her on my list for years.

Q. She was a married woman?

A. Yes, sir.

Q. Her husband was not living with her?

A. No, sir.

Q. Is Carrie, the girl here, supposed to be his legitimate child?

A. No, sir, she is illegitimate.

Q. Was Carrie born while her mother was living with her husband?

A. No, sir.

Q. Then her husband must not have lived with her very long?

A. No, sir.

Q. Where did her husband live?

A. In Charlottesville.

Q. Of course you don't know whether he visited her?

A. I could not say definitely, no.

Q. Now, what are the—what about this girl Carrie, herself—is there anything about her? Is she an incorrigible?

A. I really know very little about Carrie after she left her mother. Before that time she was most too small.

Q. She was taken by——

A. (Interrupting.) She was taken by Mr. and Mrs. Dobb.

Q. So far as you know, you know nothing about her after the Dobbs took her?

A. Except one time when she was in school, in the grammar grade. The Superintendent called me and said she was having trouble with Carrie. She told me that Carrie was writing notes, and that sort of thing, and asked what should she do about it.

Q. Writing notes to boys, I suppose?

[fol. 55] A. Yes, sir.

Q. Is writing notes to boys in school, nine or ten years old, considered anti-social?

A. It depends on the character of the note.

Q. Did you see the notes?

A. Yes, sir.

Q. Well, if the note is not altogether proper, is it evidence of anti-social——

A. For a child ten years old to write the notes she was writing, I should say so.

Q. Suppose the child had been sixteen years old, would it have been regarded as anti-social for writing that class of notes?

A. I should say so, assuredly.

Q. Well, then, there is nothing in the age of the child—I mean the actual age—I ask you, if the child had been sixteen years old, would it still have been anti-social?

A. Well, if a girl of sixteen had written that kind of note, she ought to have been sent to Parnell—Isle of Hope.

Q. Has it come under your observation in your official capacity, any of this girl's own acts?

A. No, sir, not since the Dobbs took her.

Redirect examination.

By Col. Strode:

Q. Do you know Lawrence Dudley?

A. Yes, sir.

Q. Do you know his relationship to Carrie?

A. I think he is a distant cousin; I am not certain.

Q. What do you know about Lawrence?

A. Lawrence has given great trouble all of his life to his family. He has been incorrigible, and they have had trouble with him—he was incorrigible as a boy. He is a grown man now.

Q. What is the trouble with him now?

A. I don't know anything about him now, but as he was growing up and going to school, he was a great deal of trouble to his family and the school authorities.

Q. Trouble in what way?

A. I don't know. He generally misbehaved himself. I understand that his father had to replace things he had stolen, and he was objectionable in his behavior.

[fol. 56] Q. Did he have any police record?

A. I think so, but I am not perfectly sure about that.

Recross-examination.

By Mr. Whitehead:

Q. What is your definition of an incorrigible child?

A. Well, a boy or girl that won't stay at home and won't conform to the usual things that children conform to; going to school, and obedience to parents, and staying in off the street.

Q. It does not necessarily mean they are immoral or thieves?

A. No, I don't think so. An incorrigible boy is not always a thief.

Q. A boy that plays hookey from school, and is a thief——

A. (Interrupting.) Is incorrigible.

(Witness stands aside.)

Miss Edna Wood, a witness of lawful age, having been first duly sworn, testified as follows:

Direct examination.

By Col. Strode:

Q. Miss Wood, where do you live?

A. I live at Earleysville.

Q. I never heard of Earleysville; would you mind saying a little more definitely where Earleysville is? Is it in the United States?

A. Yes, sir, it is in Virginia. It is in Albermarle County.

Q. What is your occupation?

A. Teacher.

Q. Do you know Doris Buck, the half-sister of Carrie Buck?

A. Yes, sir, I know her.

Q. What do you know about her?

A. Well, I know very little about her. She is in my room. I have only had her six weeks.

Q. And you know nothing about her?

[fol. 57] A. I know more than that. I don't really know so very much—I have heard right much.

Mr. Whitehead: Of course, the same thing I said before—(regarding objection to be made later if he so desires).

Q. Won't you please tell us what you do know?

A. Well, she was going to school for six years, and last year she was promoted to the second grade, and this year I had to put her back. She couldn't do second year work.

Q. Do the school records show that?

A. No, sir, the school records have been lost.

Q. And she comes to your school as having been in school six years?

A. Yes, sir.

Q. In what grade is she?

A. She is in the first now. She was in the second, and I put her back.

Q. Why did you do that?

A. I suggested it; I didn't really do it myself. The Supervisor put her back.

Q. Won't you tell us why it was done?

A. Well, she couldn't keep up with the second grade work.

Q. She couldn't keep up with the second-grade work, although she had been in school six years?

A. Yes, sir.

Q. How old is Doris?

A. Eleven or twelve.

Q. Eleven or twelve, and still in the first grade in school?

A. Still in the first grade.

Q. Would you call her a bright child?

A. No.

Q. Would you call her a dull child?

A. Well, she is dull in her books—I would call her dull in her books.

No cross-examination.

(Witness stands aside.)

[fol. 58] Miss Virginia Beard, a witness of lawful age, having been first duly sworn, testified as follows:

Direct examination.

By Col. Strode:

Q. Miss Beard, where do you live?

A. Charlottesville.

Q. What is your occupation?

A. Teacher.

Q. Do you know Doris Buck?

A. No.

Q. Do you know Roy Smith? I am speaking of the boy that is half-brother of Carrie Buck?

A. I know Roy Smith.

Q. Do you know his relation to Carrie Buck?

A. I don't know anything about that.

Q. How old is Roy?

A. Fourteen.

Q. He is fourteen. What sort of boy is he at school?

A. Well, he didn't do passing work in the fourth grade.

Q. What sort of behavior has he?

A. Well, he tried to be funny—tried to be smart.

Q. How does he compare mentally with other boys of his age in school?

A. Well, he is below the grade of other boys of his age in school.

Q. Basing your reply on your experience as a school teacher, would you consider him weak-minded?

A. Well, I don't know.

Cross-examination.

By Mr. Whitehead:

Q. Miss Beard, this boy, Roy Smith, has he any record that would lead you to believe he had criminal tendencies?

A. No, sir, not that I know of.

Q. Does he lie or steal?

A. No, I never found it out.

[fol. 59] Q. You say he is below boys, mentally, of about the same age? How old is he?

A. Fourteen.

Q. What grade is he in?

A. Fourth.

Q. Is that about the same grade for boys of his age?

A. Boys of fourteen are usually in first grade of high school.

Q. What grade is that?

A. That would be the eighth.

Q. That is the average, isn't it?

A. I think so.

(Witness stands aside.)

Miss Virginia Landis, a witness of lawful age, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Strode:

Q. Miss Landis, where do you live?

A. Charlottesville, Virginia.

Q. Do you know George Dudley?

A. Yes, sir.

Q. Do you know his relationship to Carrie Buck?

A. No, I don't know anything about Carrie Buck.

Q. What do you know about George?

A. George attended my school, and I would consider him a dull child, but a normal child.

Q. How old is he?

A. George told me he was eleven, but he was a very much overgrown boy for eleven years old. Now, he has not been in my school for two years.

Q. Why do you say he is both a dull boy and a normal child?

A. Well, we grade them as normal and dull and bright, and I class him with the dull-minded.

Q. What evidence does he give of being dull?

A. He is slow in grasping things in school.

Q. How was he up on his grades?

A. He was below the average. He was in the fifth grade [fol. 60] when he left school.

Q. What was his age then?

A. He told me eleven, but I heard from other people he was older than that.

Q. Do you know George's brother, Arthur?

A. Just to speak to him when I see him.

Q. What do you know about him?

A. Just enough to say "good morning" to him.

Q. You say you know nothing of Arthur except to speak to him?

A. Well, I have met him a few times, but I would not say I was acquainted with him. We would have some little entertainments at school and he would come and stand around, but I had no contact whatever with him. We would just speak to him.

Cross-examination.

By Mr. Whitehead:

Q. Do you know what relation, if any, George and Arthur Dudley are to Carrie Buck?

A. I don't know Carrie Buck at all.

(Witness stands aside.)

JOHN W. HOPKINS, a witness of lawful age, having been first duly sworn, testified as follows:

Direct-examination.

By Col. Strode:

Q. Mr. Hopkins, where do you live?
A. I live at——
Q. In Albemarle County?
A. Yes, sir.
Q. Have you any official position in that county?
A. I am Superintendent of the County Home.
Q. How long have you been in that position?
A. Eight years.
Q. Do you know Roy Smith, a half-brother of Carrie Buck here?
A. Yes, sir.
[fol. 61] Q. What do you know about him?
A. Well, all I know, I have just seen him passing through the place back and forth. That is the extent of my acquaintance with him.
Q. But you haven't told us anything yet that you know about him. You say you have seen him passing through the place: do you know anything about him?
A. I don't know anything particular about him. I think his is rather an unusual boy.
Q. In what way?
A. He struck me as being right peculiar.
Q. He is a peculiar boy?
A. I think so.
Q. Now, why can't you tell us what you know about him?
A. Well, the only thing I know that could cause me to have an opinion about him at all is, he came through the place one day—he was going to school. He stopped and was waiting on the path, and I asked him who he was waiting for. He said he was waiting on some other children, they was going home to spend the night with him. I said: "Boy, those children have gone home," and he said well, they was coming with him tomorrow night. He had been standing there waiting I suppose twenty or thirty minutes.
Q. Did you tell Dr. Estbrook that you would consider that boy mentally defective and foolish?

A. I think so, yes.

Q. Then why don't you tell us that, then, Mr. Hopkins. Are you averse to testifying?

A. No, sir, but that is all I know about him.

Q. Now, why do you consider him mentally defective?

A. Well, that is the only thing I ever saw——

Q. Is that the only time you saw him?

A. No, sir, I have seen him a number of times.

Q. But in your opinion he is mentally defective?

A. Yes, sir, but I can't recall any other specific instance that would cause me to think so—not any particular thing.

Q. Do you know Richard Dudley?

A. Yes.

Q. Do you know Carrie Buck?

A. No, sir.

Q. Do you know Emma Buck, the mother of Carrie?

A. No, sir.

Q. But you do know Richard——

[fol. 62] A. Dudley? Yes, sir.

Q. What do you know about Richard Dudley?

A. Well, I don't know very much about Mr. Dudley. He strikes me as being right peculiar, and that is all I do know about him, but as to why, I couldn't tell you any particular case at all.

Q. Is he a man about, or below, the average intelligence?

A. Well, I don't know, sir. I don't know whether I am capable of judging that.

Q. How far does he live from you, Mr. Hopkins?

A. About half a mile.

Q. Lives there in the same neighborhood, and you don't know anything about him?

A. I don't see him once in six months.

Q. Didn't you tell Dr. Estbrook yesterday——

A. I did—I told him I thought so, but since considering that thing——

Q. It is natural that it would be embarrassing to you to testify about these people—being neighbors——

A. I know, but I don't mind telling you what I know to be a fact.

Q. Do you know Richard's son, Arthur?

A. Yes, sir.

Q. What do you know about him?

A. Well, he always struck me as being a little peculiar.

Now, the only instance I can recall, I had an engine that wouldn't start, and he wanted to try to start it. I knew what was the matter with the engine, but I told him to go ahead if he wanted to do it, and he cranked and cranked, and could not start it, and he told me he had found out what was the matter with the engine; that it wasn't made right.

Q. Do you consider him above or below the average?

A. Well, that question is exactly like the other, and I answer it the same way.

Q. Yesterday you thought he was below, and today you don't know.

A. Well, I don't know. That is right.

Cross-examination.

By Mr. Whitehead:

Q. Do you know the people pretty generally in that neighborhood in which this fellow, Richard Dudley, lives? [fol. 63] A. Yes, sir.

Q. How far does he live from your place?

A. Half a mile.

Q. How long have you lived there?

A. Eight years.

Q. Do you know the people generally around there pretty well, in that neighborhood?

A. Yes, sir.

Q. What does Richard Dudley do?

A. Well, he has a farm, but he has been working on the section for the last two years, I think. I don't know just what he is doing now. I haven't seen him for six or eight months.

Q. Has he, to your knowledge, ever been guilty of any theft, or anything of that sort?

A. No, sir, never heard a word of harm about him in my life.

Q. Now, according to your view, is he an average citizen in that neighborhood?

A. Well, take it in that neighborhood, I believe he is.

Q. Well, what is the matter with the neighborhood?

A. I don't know.

Q. Take it in the neighborhood—is that a neighborhood where all the Sprouses live?

A. Yes, sir—not all of them.

Q. Is that in the Ragged Mountain of Albemarle?

A. Yes, sir.

Q. Are the citizens in that neighborhood average citizens of Albemarle, mentally?

A. I don't know. I don't think so.

(Witness stands aside.)

SAMUEL DUDLEY, a witness of alwful age, having been first duly sworn, testified as follows:

Direct examination.

By Col. Strode:

Q. Mr. Dudley, where do you live?

A. Charlottesville.

[fol. 64] Q. Do you know Emma Buck, the mother of Carrie?

A. Yes, sir.

Q. Do you know the father?

A. Yes.

Q. What was his name?

A. Richard Harlow.

Q. Richard Harlow was the father of Emma Buck?

A. Yes, sir.

Q. What did you—what was your opinion of Richard, mentally?

A. I suppose Richard had just as good ordinary sense as the generality of the people. Now, Mr. Strode, he wasn't a thorough educated man. He had some little joking ways sometimes, but outside of that he was all right.

Q. Did you regard him as at all peculiar in any way?

A. No, no more than just in a joking manner, sir.

Q. Didn't you tell Mr. Est*a*brook yesterday or the day before, that you considered Richard peculiar, or below the average?

A. No, sir, I just told him he had those peculiar ways. That gentleman there (pointing) asked me Saturday night, and pressed me about a lot of things I didn't know anything about.

Q. Didn't you tell him you thought Richard was peculiar or below the average?

A. Just in this joking ways and the manner he had. He was a man that tran-acted his own business up until his death.

Q. But you did tell Dr. Estabrook he was peculiar?

A. Well, possibly I did. He kept quizzing me about different things, and I thought I would just let him go.

Q. What has become of Richard?

A. Oh, he is dead.

Q. What was your relationship to him?

A. He married my sister.

Q. He married your sister?

A. Yes.

Q. Do you know anything about the brothers of Richard?

A. No, I know them when I see them. They live there in Charlottesville.

[fol. 65] Cross-examination.

By Mr. Whitehead:

Q. What is your name?

A. S. J. Dudley.

Q. And Richard Dudley that they are talking about married your sister?

A. No, he is my brother.

Q. Who was it that married your sister?

A. Richard Harlow.

Q. Richard Dudley was your brother, and Richard Harlow was the father of Emma Buck—he married your sister?

A. Yes, sir.

Q. So Emma Buck was your sister?

A. No, Emma Buck was my niece.

Q. Mr. Dudley, where do you live down there?

A. 800 Anderson Street, in Charlottesville.

Q. You don't live in the neighborhood that Mr. Hopkins does?

A. No, sir.

Q. Do you know anything about this little girl here?

A. No, sir, the only thing that I know, they got her in with a family by the name of Dobbs. I never saw the child before in my life.

Redirect examination.

By Col. Strode:

Q. Has she any brothers or sisters—this girl?

A. I don't know myself. They tell me she has.

Q. You are closely related to them, Mr. Dudely? Don't you know Roy and Doris?

A. No, I don't know as I have ever seen them.

Q. You don't know anything of the children of this niece of yours?

A. No.

(Witness stands aside.)

Miss Caroline E. Wilhelm, a witness of lawful age, having been first duly sworn, testified as follows:

[fol. 66] Direct examination.

By Co. Strode:

Q. Miss Wilhelm, what is your occupation?

A. I am a social worker of the Red Cross. Secretary Superintendent of public welfare of Albemarle County.

Q. Have you any record of this girl, Carrie Buck?

A. Yes, sir.

Q. What is her record?

A. I came to Charlottesville about February of this year, and just before that time the case had been reported to Miss Duke, who was in charge temporarily in the office as Secretary, that Mr. Dobbs, who had charge of the girl, had taken her when a small child, had reported to Miss Duke that the girl was pregnant and that he wanted to have her committed somewhere—to have her sent to some institution, and wanted Miss Duke to have that brought about. The matter was not put through until I was in the office, and officially I brought Carrie Buck over to the Colony at Lynchburg.

Q. You know that Carrie was not married?

A. No, she was not.

Q. Was that child born?

A. Yes, sir.

Q. She had an illegitimate child?

A. Yes, sir.

Q. And her character was such that you had her committed to the institution at Lynchburg?

A. Yes, sir. There was a commission held and she was committed to the Colony.

Q. From your experience as a social worker, if Carrie were discharged from the colony still capable of child-bearing, is she likely to become the parent of deficient offspring?

A. I should judge so. I think a girl of her mentality is more or less at the mercy of other people, and this girl, particularly, from her past record. Her mother had three illegitimate children, and I should say that Carrie would be very likely to have illegitimate children.

Q. So that the only way that she could likely be kept from increasing her own kind would be either segregation or something that would stop her power to propagate. Is she an asset or a liability to society?

A. A distinct liability, I should say.

Q. Did you have any personal dealings with Carrie?

[fol. 67] A. Just a few weeks between the time when the commission was held and when I brought her to Lynchburg.

Q. Was she obviously feeble-minded?

A. I should say so, as a social worker.

Q. Did you know her mother?

A. No, I never saw her mother.

Q. Where is the child

A. The child is with Mr. and Mrs. Dobbs. They kept the child.

Q. How old is the child?

A. It is not quite eight months old.

Q. Have you any impression about the child?

A. It is difficult to judge prob-ilities of a child as young as that, but it seems to me not quite a normal baby.

Q. You don't regard her child as a normal baby?

A. In its appearance—I should say that perhaps my knowledge of the mother may prejudice me in that regard, but I saw the child at the same time as Mrs. Dobbs' daugther's baby, which is only three days older than this one, and there is a very decided difference in the development of the babies. That was about two weeks ago.

Q. You would not judge the child as a normal baby?

A. There is a look about it that is not quite normal, but just what it is, I can't tell.

Cross-examination.

By Mr. Whitehead:

Q. This baby you are talking about now is Carrie Buck's baby?

A. Yes, sir.

Q. What other baby was the comparison made by?

A. Mr. and Mrs. Dobbs' who have had Carrie since she was three years old. They have a daughter who has a baby three days older than Carrie's.

Q. You say the baby of Carrie's does not measure up to the Dobbs'.

A. Not nearly.

Q. Neither one of them can talk.

A. No.

Q. Can they walk?

A. No.

Q. In what way do they differ?

A. The children—Mrs. Dobb's daughter's baby is a very [fol. 68] responsive baby. When you play with it, or try to attract its attention—it is a baby that you can play with. The other baby is not. It seems very apathetic and not responsive.

Q. Now, Miss Wilhelm, the only—I want to get at your view about this. You say when this girl first came under your attention she was pregnant?

A. Yes, sir.

Q. Did you have the commission?

A. No, that was held before I came to Charlottesville.

Q. You had nothing to do with the commission that adjudged her feeble-minded?

A. No.

Q. When you first knew her she was pregnant, and after that, you sent her to the Colony?

A. Yes, sir. There was some delay about sending her to the Colony.

Q. Now, there are records down in Charlottesville in connection with social work—have they any records against Carrie Buck, the girl here, which would tend to show she

was feeble-minded or unsocial or anti-social, or whatever the term is, other than the birth of this child?

A. No, sir, our record begins on the 17th of January of this year, and that is the first knowledge we have of her.

Q. Basing your opinion that the girl is unsocial, or anti-social, on the fact that she had an illegitimate child—the point I am getting at is this—are you basing your opinion on that?

A. On that fact, and that as a social worker I know that girls of that type——

Q. Now, what is the type?

A. I should say, decidedly feeble-minded.

Q. But the question of pregnancy is not evidence of feeble-mindedness, is it—the fact that, as we say, she made a miss-step—went wrong—is that evidence of feeble-mindedness?

A. No, but a feeble-minded girl is much more likely to go wrong.

Q. Now, Miss Wilhelm, there is one more question; you said in answer to Col. Strode that the girl was a decided liability. Do you mean—this girl was taken care of by Mr. Dobbs and his family?

A. Yes, sir.

Q. Up to the time she gave birth to this child?

A. Yes, sir.

Q. Up to the time she was removed to the Colony was she still living with the Dobbs'?

[fol. 69] A. Yes, sir.

Q. Was she able to do the average work of a girl of her age?

A. Under direction. Mrs. Dobbs tells me she needed very careful supervision.

Q. Under supervision she was able to do household work?

A. Yes, sir.

Q. She is a liability—in what way do you think by sterilizing she would become an asset to the State?

A. I don't know that she would become an asset, but much less of a liability.

Q. Do you think she could be with safety discharged without being sterilized?

A. I don't know so much about the working of that law and the working out in individual cases. I don't know what the results have been in those cases.

Q. Now, this girl, according to your viewpoint she has an immoral tendency?

A. Certainly.

Q. Judging by the fact that she has already given birth to an illegitimate child, and has an immoral tendency, is it your opinion that by sterilization she would be made less of a liability and more of an asset to the State?

A. I think it would at least prevent the propagation of her kind.

Q. It would prevent the propagation of her kind, undoubtedly, but is it your opinion that it would have a deterrent effect in that it would make her less immoral?

A. I am afraid I am not competent to judge of that.

Q. Your idea is, while she would never become an asset, she would become less of a liability by sterilization, and your idea is that she could be turned over to somebody and under careful supervision be made self-supporting? Is that your idea?

A. I think so, yes, sir.

(Witness stands aside.)

Miss Mary Duke, a witness of lawful age, having been first duly sworn, testified as follows:

[fol. 70] Direct examination.

By Mr. Strode:

Q. Miss Duke, you live in Charlottesville, I believe?

A. I do.

Q. It is in evidence here by Miss Wilhelm that about the time that she took charge of the social work at Charlottesville you were assisting in that work?

A. I was in charge of it until they could get a secretary. I was there assisting Miss James. She left, and I was in charge after she left until we secured Miss Wilhelm.

Q. Did that work bring you in contact with Carrie Buck?

A. Yes, sir.

Q. Tell us what you know of her.

A. I had heard of Emma Buck—I had seen her. I was visiting an old woman as a charity case. This woman had

a little baby—I suppose it was Doris. I understood at the time she was of bad character. I understood at the time that efforts were being made to put her in an institution, but I lost track of her. Mr. Dobbs came and reported that this girl was feeble-minded, though I have no personal knowledge of her having been sent to the Colony. I went to see Mrs. Dobbs. She told me this child was a good worker when watched, and that she had sent her to church and Sunday School and school until she could not trust her. She had left her for a few days on account of some illness the summer before, and she had left someone in charge of the child, but they didn't watch her closely enough. I saw Judge Shackleford and he told me that a commission should be held. It was held in his office, and the papers were sent off. They were returned because of some flaw, and they were sent to Mr. Ritchie, a lawyer in town. At that time Miss Wilhelm came, and the further steps were taken by her.

Q. Did you see Carrie at all?

A. I saw her, but I never had any dealings with her. I never remember seeing her except that time.

Q. Your knowledge of the family began with knowledge of her mother?

A. Yes, sir.

Q. Who, as you say, was a woman wandering around with one baby?

A. Yes, sir. I heard she had other children, and they tried to take this one from her, but she yelled and cried so they gave it back.

[fol. 71] Q. And in that way you were brought into connection with Emma's daughter, Carrie, who seemed to be following in her footsteps?

A. Yes. She didn't seem to be a bright girl.

Q. Do you know of her having been in any clinic in Charlottesville?

A. This girl?

Q. Yes?

A. Not that I know of.

Q. Of either of them—Emma or Carrie?

A. Not that I remember.

No cross-examination.

(Witness stands aside.)

Doctor J. S. De Jarnette, a witness of lawful age, having been first duly sworn, testified as follows:

Direct examination.

By Col. Strode:

Q. Doctor, where do you live, and what is your occupation?

A. Staunton, and my occupation is Superintendent of the Western State Hospital at Staunton.

Q. What class of patients?

A. Chiefly the insane. We take also the habitual drunkards and dopers—drug addicts.

Q. How long have you been officially connected with the hospital at Staunton?

A. Thirty-six years.

Q. How long have you been Superintendent?

A. Since 1906.

Q. How does that hospital compare in size with the four state hospitals for white patients, similar?

A. It is the largest.

Q. How many patients do you have there, on an average?

A. Twenty-one hundred. Fifteen hundred actually in the hospital, and the balance on parole.

[fol. 72] Q. You are a physician?

A. Yes, sir.

Q. Specializing in insanity?

A. For thirty-six years.

Q. Could you approximate the number of mental defectives that you have been called upon, either directly or in consultation, to treat during your thirty-six years' experience?

A. I have been—you mean including the insane?

Q. That is what I had special reference to.

A. I have treated a little over eleven thousand patients since I have been connected with the hospital.

Q. Doctor, there is involved in this case an application of what we may term the Virginia Sterilization Statute, passed at the last meeting of the General Assembly.

A. I am familiar with the statute.

Q. You are familiar with that statute?

A. Yes, sir.

Q. Now, not viewing the matter from a legal standpoint, but from the standpoint of your experience in dealing with patients such as are committed to your hospital, and also from the standpoint of the welfare of society, what have you to say about the operation of this act?

A. The operation of sterilization of insane people?

Q. No. I called your particular attention to the provisions of this act, which, of course, covers that, but the act provides that this operation for sterilization shall not be perf-rmed on any patient unless in the first place the superintendent of the hospital thinks it is a proper case and petitions his board of the hospital for authority. It then provides that at a hearing, which must be after notice, that it shall not authorize you to perform this operation unless the inmate is either insane, idiotic, feebleminded, or epileptic, or is the probable, potential parent of feebleminded offspring. It provides also that the said inmade may be sterilized without detriment to his general health; also that the welfare of the inmate and of society will be promoted by such sterilization. Now, I ask you the first general question: what, in your opinion, would be the effect of the welfare of the individual who might be operated upon, and upon society in general?

A. It is the best thing that can be done for them.

Q. For who?

A. For the patient and for society.

Q. The first finding that the Board must find, and of course, that the Court must find, would be that the inmate [fol. 73] is either insane, idiotic, imbecile, or epileptic. They would first have to find that Carrie Buck is feebleminded?

A. Yes, sir.

Q. Is the condition of feeblemindedness one that is judicially ascertainable?

A. Yes, sir.

Q. Are there well-recognized tests that may be applied that would safely classify those that are feebleminded?

A. There are.

Q. What would you say was a feebleminded person?

A. I would say a feebleminded person was one who, on account of his mental condition, was unable to take care of himself properly.

Q. Mental condition in what way?

A. Any way that occurs from his birth or the failure to develope of his mind, would strictly come within the definition. Of course, insanity would cover the whole thing.

Q. I understand that insanity may supervene upon a mind of normal development, but mental defectives——

A. That is feeble from birth.

Q. Now, feeblemindedness is——

A. Is inherited and acquired.

Q. Is it curable?

A. No, sir.

Q. It is an incurable mental defect?

A. Yes, sir.

Q. Therefore it is judicially ascertainable, whether or not any particular individual is feebleminded, is it?

A. It is.

Q. In your experience, and in your studies, have you reached any conclusion as to whether or not there are certain laws of heredity which are ascertainable and which may be relied on in determining whether or not a feebleminded patient is likely to be a potential parent of socially inadequate offspring?

A. Yes, sir.

Q. I will ask you to enlarge on that. I wish you would give the Court the benefit of some of your observations. Give them the family history, to a degree, of one of these feebleminded patients—how far you can foresee of they will probably propogate?

A. Well, you find feeblemindedness runs in families. That is, if the parents are feebleminded and the children are feebleminded, you have every right to believe it is from inheritance. Occasionally a feebleminded child may be from an injury, which will not affect its offspring—that is, if it is accidental.

[fol. 74] Q. Yes, sir, but if it is inherited?

A. If it is inherited, he is liable to transmit it, and I think Mendel's law covers it very well. Of course you are familiar with that.

Q. No, I am not. What is Mendel's law?

A. Well, Mendel's law is a law in which the offspring—Mendel was a Catholic priest, and he worked out the law of inheritance of sweet peas. He took the vegetable world and took those red and white peas and crossed them, and

he found that by crossing the red and white peas he got certain results: one-fourth of them would have what we call the dominant quality of one of the peas, and one would be recessive. The dominant is, for instance, suppose the red is dominating; one-fourth of the peas will come red, and that red pea will continue to breed red. Another fourth may breed—may be red, but it will have a remnant of the white stock in it, and if you breed it with another red pea it will bring out occasionally some white. Others of the peas will be mixed one-fourth, and you will have a mixed breed, and if you breed these mixed ones together for a while you will get a red pea occasionally, and occasionally a white pea, but if you keep on breeding, you will get a mixed pea. One-fourth of them will be dominant; half will be mixed, and one-fourth then will be white, in which they will hold those qualities that are held in—that is, a white pea will breed a red one. It took him years and years to work it out, and he found out that in breeding people, a man that has a certain quality of mind will breed one-fourth a certain way. Now, we know in breeding animals, take a thoroughbred bull and breed him on mixed stock and you will get the color of the thoroughbred—it is dominant, but the mixed breed has no tendency to go in any particular direction and the thoroughbred dominates. That is Mendel's law.

Q. Now, what is your observation as to its application to human beings?

A. I have never worked the law out, but it seems to me from the history of the cases I have had that they work out pretty much that way, but I have no accurate knowledge of it because inheritance is such a complicated thing that unless a man devotes himself particularly to it—now, you take a feebleminded woman, if she has a child it is very apt to be—that one-fourth of them will be feebleminded. If both parents are feebleminded, it is practically certain that the children will all be feebleminded.

Q. But if the feebleminded woman is mated with a normal man?

A. Then about one-fourth of them would probably be feebleminded.

Q. Suppose that a normal man has a recessive trait of [fol. 75] the feebleminded in him; what effect would that have on the offspring of the mother?

A. About one-half. It depends on the mother.

Q. Have you had opportunities to observe as to what is the likelihood of a feebleminded woman who is loose in society—is she more likely to mate with people of her own type, or normal men?

A. The feebleminded woman will have three children to every one child a college graduate will have. They are easily over-sexed, and it depends on their looks as to how the boys or men will take advantage of them, and it depends on her opportunities. An illustration was had in New Jersey, called the Callicac case. Old man John Callicac in 1755 had an illegitimate child by a feebleminded woman. He also had offspring from his wife, and none of them were feebleminded. There were 480 offspring as a result of the child he had by this feebleminded woman—(Dr. De Jarnette at this point consults his notes)—there were 143 feebleminded; 44 normal, and 293 undetermined; probably wouldn't get the history of them—this occurred in 1755. That is a report that was generally published throughout most of the books on heredity.

Q. In other words, the ancestor Callicac was normal?

A. Supposed to be.

Q. Mated with a wife that was normal?

A. Yes, sir, and had 496 descendents.

Q. None of them feebleminded?

A. No.

Q. None criminal?

A. None so far as we know.

Q. And then he mated with a feebleminded girl?

A. And their descendents were 480—143 of them were dependents on the State of New Jersey—that is about one-fourth—that is a little over one-fourth.

Q. Now, on the side of the mating with the normal woman, what was the type of the offspring as illustrated in the examples?

A. Normal all the way through.

Q. Did any of them reach eminence, do you know?

A. I don't remember.

Q. You don't know about that, Doctor De Jarnette? Now, the next requirement here is that the patient may be sexually sterilized without detriment to his physical welfare?

A. The operation must be by sectomy—sylgectomy. Now, sylgectomy is the operation that the hospital ordered should be made on this patient.

[fol. 76] Q. I wish you would tell his Honor whether or not that operation may be performed without detriment, as the statute puts it, to the general health of the patient?

A. It can be. Would you want me to give a reason for it?

Q. Yes, just explain to the Court what the operation is?

A. Every woman has two ovaries. Monthly a little egg comes out of this ovary—practically every month—and is passed down into the womb. There is a small tube, about the size of a broom straw which connects the ovary with the womb. Sylgectomy is cutting off this little tube and tying off the ends. Of course, you have to cut into the abdominal cavity, cut off those tubes, and tie the ends. It is a very safe operation in the hands of a skilled surgeon. It gives 100 per cent successful results. Now, this operation leaves the ovaries. The ovaries are important to a woman. They keep her normal health. It does not interfere with her sexual desire; it does not interfere with her sexual enjoyment; but it does stop reproduction. Now, in the male, there is a little tube running from the testicle. That tube is cut down entirely, but I don't think that operation ought to be done on a very young person, because—I mean it should be done on a very young person, because you leave the testicle in place. Now, if you were to take the testicle out, it ought not to be done on a very young person, because you notice the bull—the bull-neck is a result of that. If you do leave the tube, the secretion continues in his body, and he is left as a normal man. This operation on a male does not interfere with his sexual desire or enjoyment, but does stop reproduction. Now, if we remember that the insane and the unfit and unsafe of our state cost us approximately one-seventh of our income under the present conditions—and among the feeble-minded, I don't suppose we have more than one-fiftieth of them segregated, and they are out in the world reproducing, and the reproduction of the unfit is just as much a manufactured article as plows and threshing machines, because the feeble-minded produce their kind.

Q. Now, doctor, I want to ask you about the operation of —; whether or not it is an operation that in a proper

case may be performed upon a woman of child-bearing age without detriment to his or her general health?

A. I have just said so. I say it again.

Q. The next requirement is that the welfare of the inmate shall be promoted by such sterilization. In what way would you say it would promote her welfare?

A. In the first place, the inmate's situation is that he is locked up. He has no opportunity to gratify his sexual [fol. 77] desire which God has given him—no opportunity to do that. He is a burden to the State. Now, if he is sterilized, he can be liberated, and under direction can probably make his living. He can marry and have the sexual gratification which he could otherwise have if he was out in the world, without bringing children into the world. A woman, otherwise, would be having them anyway, and she cannot take care of the children which she is liable, and almost certain to bring into the w ld.

Q. Naturally, it is provided that this operation should not be performed only for the welfare of society. In what way would you say the welfare of society would be promoted by it?

A. The standard of general intelligence would be lifted; the crimes that they are liable to produce, as there are a larger and larger percentage of feeble-minded in prison, and as it affects that, it would lower the number of our criminals.

Q. Could you state approximately, or make any conjecture of how many patients there are in our hospital that might, with benefit to themselves and to society, be brought under the operation of this statute?

A. I would say at present we have about twenty, and we will run from ten to fifteen a year. Now, that is including the insane. Some forms of insanity appear to be brought about by reproduction. That is an old puerperal mania. We have had women come back to five or six times after reproducing, with the most terrible form of insanity which we have to deal with.

Q. Have you found, in your thirty-six years of experience, marked examples of the working out of the laws of heredity in the families which have come to you from time to time?

A. I have. I can cite you some instances if you think it necessary to go into that.

Q. No, I do not think it is necessary. Now, one other question: the bulk of your patients are insane?

A. Yes, sir.

Q. They are not, themselves, certainly, a great many of them capable of forming an intelligent judgment as to what is best for their own welfare, are they, in respect to the effects of such an operation as this?

A. No, sir, I believe it is a question of education, Mr. Strode.

Q. Now, taking the patient who, through insanity or feeble-mindedness, is not capable of forming an intelligent judgment as to whether or not this operation would be for their own welfare, do you know of any better way of having a judicial ascertainment by the State as to whether or not [fol. 78] it would be better to have this operation performed, than as set out in this act?

A. I do not, and I would like to modify my statement as to patients being able to say what is good for themselves, because a good many are very, very anxious that this operation be done, to free them from the curse of reproduction.

Q. I was asking you this question; if the patient has not the intelligence of mind to decide whether this operation should be performed, should not there be some tribunal somewhere to decide whether that operation should be performed?

A. It should, and this is the best I have ever seen.

Q. You have heard the evidence tending to show that this girl, Carrie Buck, is herself feeble-minded; that her mother is also an inmate of the same institution and is feeble-minded; and that Carrie has an illegitimate child, who, though only eight months old, does not appear to be normal. Taking those facts into consideration with the other evidence you have heard here in regard to her, what would you say as to whether or not she is the probable potential parent of socially inadequate offspring, by the laws of heredity?

A. I think so.

Q. You think she might be sterilized without detriment to her general health?

A. I do.

Q. Do you think her welfare and the welfare of society would be promoted by her sterilization?

A. I do.

Cross-examination.

By Mr. Whitehead:

Q. The same objection to all that is applicable to the point that I am going to make, because a good deal that the doctor has said, I can see, is absolutely legal testimony.

Now, Doctor, this act of the legislature applies not only to the feeble-minded, but to the insane, idiots, and epileptics. Your experience for thirty years has been more largely with the insane?

A. Yes, sir.

Q. Your institution, as you stated, is the largest institution for the white insane in the state?

[fol. 79] A. Yes, sir.

Q. Doctor, what is, in your opinion as a physician and from your experience as superintendent of that hospital, what in your opinion is the greatest cause of insanity?

A. Inheritance.

Q. Have you ever had occasion to trace back along the lines of heredity to find out what was the beginning of the thing?

A. No, sir. Adam, I think, was a little off himself on some things. The only history we have is given in the regular commitment papers, and that frequently states that the patient's parents had been affected.

Q. What proportion of insanity is directly, in your opinion, attributable to syphilis?

A. That varies. In our hospital we took 2,400 Wasserman's and only two per cent were syphilitic—24 per cent in the negro. In New York State they ran 18 per cent.

Q. If a Wasserman test shows negative, they have no syphiletic taint?

A. Yes, sir.

Q. Now, you say in the hospital——

A. Two per cent showed positive.

Q. And in the negro hospital at Petersburg——

A. This is from memory—I think it was 24 per cent.

Q. You don't know what it is in the Southwestern and the Eastern and the Epileptic Colony?

A. I do not.

Q. Doctor, you stated a while ago that the welfare of the patient would be promoted by performing this operation of

sterilization—salpingectomy; you stated that the welfare of the patient would be promoted by this?

A. Yes.

Q. And one of the reasons why you thought that the welfare of the patient would be promoted was that unless they were sterilized and turned loose, they were deprived of the right to sexually gratify themselves?

A. Yes.

Q. Now, you think that is one of the things where the welfare of the patient would be——

A. I think that is looked upon by the average man as one of the most important functions of his life, if everybody would tell the truth about it. It is one of the prime functions, and if you deprive him of that you have deprived him of a tremendous asset.

[fol. 80] Q. And the same thing is true of a womean?

A. Yes.

Q. So if a patient is turned out of the hospital after having been sterilized, they would have the right, or opportunity to gratify themselves sexually? Now, as to society, how would society be benefited?

A. By not producing any more of that kind.

Q. It is a question of selective breeding, in other words. You are cutting out the unfit by breaking up the source?

A. Yes, sir, and you are raising the standard of intelligence in the state.

Q. What are you going to do with these people when you turn them out? You say you turn them out, and say they become self-sustaining: is it your idea that they are to be discharged?

A. That is my idea. See that girl: she was a good worker and never brought into conflict with the law until she was pregnant. If she had remained sterile, in all probability she would have been there at home working, with Mrs. Dobbs, who seems to be very fond of her.

Q. Doctor, isn't it a fact that prostitution—that the bulk of the prostitutes, that the surveys show they are more or less feeble-minded?

A. I would say that the bulk of them are feeble-minded. I am no expert on prostitutes; I am just giving you my general idea.

Q. I imagine you have a good many opportunities——

A. Oh, yes, a good many come there.

Q. Now, those prostitutes that come to your asylum, isn't it a fact that the majority of those are diseased women?

A. What do you mean by that?

A. I mean women with venereal diseases?

A. Yes, and one point I am glad you mentioned—they come there, having had venereal diseases and having had children, and, brother, worse than all, white women come there having negro children.

Q. Now, the point I am getting to is this: take this girl here—let me state a hpyothetical question—this girl is feeble-minded: this girl has an immoral tendency, as demonabated at all by this operation, isn't it more than likely that child. Now, if you sterilized her and turned her out on society, isn't it more than probable that with her having that immoral tendency and her sexual desires not being abated at all by this operation,isn't it more than likely that she will contract venereal disease?

A. Is it your idea that feeling safe in sterilization, she will cohabit more promiscuously? Very likely.

Q. Don't most of this type come under Dr. Drury's definition? They are fire-ships. They don't understand the use [fol. 81] of preventatives, and therefore are more likely to contract disease. They are thrown into contact and have sexual intercourse with men who are normal men, and give them these diseases; say, syphilis? That man contracting syphilis ultimately gets married to a normal, sound woman. He passes on down to his descendants the syphiletic taint. How is society benefited by letting that girl out?

A. The man who will cohabit with a feeble-minded person would very likely cohabit anyhow and catch the syphilis, but the feeble-minded person is very easily over-sexed, and it makes but very little difference in my opinion; she would be over-sexed anyhow, and that would be for only one generation.

Q. But say this girl was sterilized and turned out and in six months she had contracted syphilis, because, as you say, this sterilization has not abated her sexual desires at all. She does know she will not have any more babies, and she goes out and goes on a rampage——

A. She has already been on one.

Q. Well, say she goes on another.

A. Very likely.

Q. So she is a potential distributor to otherwise sound men, and they get married. Now, when the off-spring of those syphiletic men come into the world with a syphiletic taint, how can you say that society would be benefited by turning this girl out?

A. Because, I believe it would be just as bad one way as another.

Q. Suppose you kept her in that hospital all the time?

A. Well, you would not need to sterilize her then.

Q. Do you weigh her sexual gratification and liberty as against her becoming, as Dr. Drury calls them, a fire-ship?

A. I do.

Q. And you say society would be benefited by turning her out?

A. Do you mean to segregate all of them?

Q. I mean all those that are in the institution. Those women without the mentality of babies, and who, as you say, are over-sexed; who are likely to drift into the prostitute class.

A. And they would drift into it anyway.

Q. Not if you kept them in there. How does it benefit society to turn them out?

A. It benefits society by not taking care of them, and by the work they do. They are hewers of wood and drawers of water, and there is not very much more likelihood that they would spread venereal disease if sterilized than if they were not. And then it is only for one generation, and the state is not able to pay for segregating them, and by hav- [fol. 82] ing an in and out method, that is to take these feeble-minded; put them in for a month of two; sterilize them and turn them out; you can get most of them sterilized, whereas the state would keep all of them in.

Q. Therefore your idea is that the State Hospital, say it can only care for a hundred—it takes one hundred and sterilizes them, and turns them out and takes another hundred, and so forth?

A. Yes.

Q. I agree with you that society would be benefited to that extent, but what I want to know is whether it would be well to take a chance on turning these girls out that they may drift into prostitution and street-walking and spreading diseases. Now, as I understand, in your institution two per cent of the insanity is attributable to syphilis?

A. Yes, but what I am trying to say is, say you have one hundred in there now who are not distributing disease, and you have nineteen hundred out distributing it and reproducing, whereas is these people were operated on and have a clearing house taking the others in and sterilizing them, you would have that many less reproducing.

Q. Now, Doctor, one more question I want to ask you: this law here says that you shall not take sound organs out of the body. Do you consider the cutting of that fallopian tube——

A. You don't take out a thing.

Q. You just cut it?

A. Yes, sir.

Q. Now, that destroys it?

A. No, sir, it shunts the egg off from its destination where it would develope.

Q. It merely prevents reproduction?

A. Yes.

(Witness stands aside.)

A. H. Estabrook, a witness of lawful age, having been first duly sworn, testified as follows:

Direct examination.

By Col. Strode:

Q. Please state your name, age—if you don't mind, residence and occupation.

[fol. 83] A. Arthur H. Estabrook; age, thirty-nine. I am on the scientific staff of the Carnegie Institution of Washington, at Cold Spring Harbor, Long Island, New York, and my official residence is at Cold Spring.

Q. What is the Carnegie Institution of Washington?

A. It is a private organization conducting research along scientific lines. The department of genetics, with which I am connected, is a department studying heredity in humans, animals and plants.

Q. How long has this study in heredity in humans and animals been carried on at the Carnegie Institution?

A. Since 1906 with respect to animals and plants, and since 1910 with respect to human beings.

Q. How long have you been engaged in that work?

A. Since 1910.

Q. I understand then that the work you have been engaged in has been assisting the investigation leading to the formulation of the laws of heredity?

A. That is right.

Q. In those investigation- has there been any effort made to determine to what extent insanity and feeble-mindedness are transmissible by heredity?

A. The studies on those subjects have been carried on for the past fifteen years, and definite laws have been found covering inheritance of feeble-mindedness and certain types of insanity.

Q. Have you yourself engaged in any particular studies tending to give you personal knowledge of such matters?

A. I have been studying those subjects since my connection with the Carnegie Institution, for fourteen years. The specific studies that I have carried out have been practically four; one a study of a large degenerate group in the northern end of New York State, a report of which was published, called the Nam family. The second largest was the Jukes family of criminals, they being a family which lived in New York City numbering about two thousand people at the present, whose record is of feeble-mindedness. Four or five years I spent in studying the Tribe of Ishmael, situated mainly in Indiana and surrounding states further west. I have also made other special studies on other groups of mental defectives—that including feeble-mindedness too.

Q. Referring to this family of Jukes, when was the first published study made of that family, with reference to feeble-mindedness and criminality?

A. In 1875 a man named Richard L. Dudley, then officially connected with the New York Prison Association investigating the jails of New York City, found a large [fol. 84] number of people who had been in the jail and later had a criminal record. A study made by Mr. Dudley at that time showed a group of seven or eight hundred who were all either criminals or paupers, and a few idiots; the term "feeble-minded" at that time not being in general

use. In 1912 I went to the area where this group had lived and continued to study from 1875 until that time, finishing the work in 1915.

Q. You don't mean you began the work in 1875?

A. No, I continued the study of them since that time.

Q. In other words, in 1912, you spent some three or four years in studying them?

A. Yes.

Q. Now, I wish you would say what was the result of that investigation?

A. Briefly, we found that the family was continuing to produce a group of mental and social defectives, and the result of the study was to show that certain definite laws of heredity were being shown by the family, in that the feeble-mindedness was being inherited according to a direct rule and that feeble-mindedness was the basis of the anti-social conduct, showing up in the criminality and the pauperism.

Q. Can't you make it a litle more concrete by summing up what you found as to individuals of the family?

A. There were approximately three thousand people that were known had died in infancy, and of the other seventeen hundred, approximately thirty-four were feeble-minded.

Q. Have you had some experience in other states of trying to work out and solve this problem of sterilization?

A. No more than investigating the family histories in connection with the working out of information, and the education previous to the carrying out of such laws.

Q. Do you know that other states have tried it?

A. I do know that other states had such laws and such laws have been carried out in other states.

Q. Is it a comparatively recent development?

A. Since 1906.

Q. Prior to that this class of legislation was unknown?

A. Practically not.

Q. You say that the investigations of this bureau of eugenics at the Carnegie Institute of Washington has resulted in the ascertainment of certain laws of heredity, apparently governing the transmission of the attributes of human beings to their descendants: I wish you would very briefly explain to the Court just what the facts have been [fol. 85] ascertained to be in that regard.

A. We find that the general characteristics or traits of the individual, either physical or mental, are inherited in pairs. A person has a characteristic or he does not have it, or he may have the opposite of it. As an example, a person may have six fingers. A normal exception to the condition of six fingers is the ordinary condition of five fingers. We know from observation, and have formulated the law that where we have the six-fingered condition, it is what is called the dominant characteristic; the normal condition of five fingers being the recessive characteristic. That is the dominant and recessive characteristic. That is the dominant and recessive characteristics going together.

Q. Doctor, we are not interested in fingers. I should have narrowed my question to what have you discovered as regards to feeblemindedness.

A. That reacts in the same respect to the normal, the feebleminded being the recessive condition, the normal condition of mind being dominant.

Q. What else have you ascertained to govern this?

A. Where feeble-mindedness *if* found in two strains, the two strains meeting, feeble-mindedsess will show up in one-fourth of the children. Where feeble-mindedness is found in one parent, that is, and only in the strain—that is, the other parent being normal but coming from a strain where there is feeble-mindedness, one-half of the children will be feeble-minded. Where feeble-mindedness is found in both parents, all the children will be feeble-minded. The rule, so far as we can find, has no exceptions. Two normal-appearing parents, both of whom come from defective strains, will in all probability have at least one-fourth of feeble-minded children. That gives the explanation of where the feeble-minded child comes from in families that are apparently normal. The blood is bad. They carry the defective germ plasm, and where two defectives' germ plasms meet, the effect again appears.

Q. I wish you would illustrate that a little—about the germ plasms. Take cases where you have a feeble-minded father and a feeble-minded mother, or a normal father and a feeble-minded mother, or a normal father and a normal mother, or what you call a feeble-minded strain in one of them, and show how your laws work out?

A. Two feeble-minded parents will always have feeble-minded children. One hundred per cent. of the children of

two feeble-minded parents will be feeble-minded. Where one parent is feeble-minded and the other parent normal, we will have one-half the children feeble-minded,—if that [fol. 86] parents comes from a defective strain. If, however, in this case the parent on one side—the normal parent, mated to a feeble-minded woman—if the normal parent comes from a good stock family where there is no mental deficiency; in the first generation none of the children will appear feeble-minded, but all of those children will carry a trait of feeble-mindedness. If one of those children marries back into a good strain, the feeble-mindedness will still be covered. It is a recessive characteristic, but if one of those children mates into a bad stock, irrespective of whether the mate is feeble-minded or not, if he marries into bad stock one-fourth to one-half of the children will be feeble-minded. In other words, it is a trait that is present in the germ plasm of the reproductive part of the individual that determines the offspring, and not the individual. We look upon individuals now as merely off-shoots of the stock—the germ plasm is what goes through.

Q. Now, you take the case of a feeble-minded man marrying a feeble-minded woman: you say all the children of such a mating will be feeble-minded? That is true?

A. Yes, sir.

Q. Suppose a feeble-minded woman marries a man who is not only normal, but has no feeble-minded strain at all?

A. I cited that case: none of the children will be feeble-minded. All of the children will appear normal, but all of those children will carry the possibility of having defective children, depending on whether or not they mate into poor stock.

Q. In other words, they carry a strain from their mother which is likely to crop out in a succeeding generation if they marry another with the feeble-minded strain?

A. Yes, sir.

Q. Suppose the mother is apparently normal but has a feeble-minded strain inherited from some ancestor, and the other parent is also apparently normal but has also inherited some feeble-minded strain from some other ancestor: what would be the likelihood of the offspring of those children—both apparently normal people——

A. One-fourth would be feeble-minded.

Q. Can you illustrate that graphically?

(Witness draws diagram for the Court.)

A. When a characteristic such as feeble-mindedness or insanity are present in individuals, we always put them in brackets. Here is a man who is normal mentally; he appears normal, but according to Mr. Strode's idea he comes from defective stock. Now, we have the same supposition [fol. 87] on the part of a female. Both of them are in brackets. Now, we know in the segregation of the germ cells we can show this under the microscope. We know that the actual elements in the germ cell which carry heredity. We know those little chemical bodies—we know that they divide. Say that in the division of the sperm cell we know the character M goes in one cell and the character F goes into another cell. Now, if this cell or nucleus with the character N mates with this ovary cell, we have an individual who has chemical determinants of two normals. If this N cell mates with this F cell we have an individual produced with the character indeterminate for N and a character F feeble-mindedness. Now, if this feeble-minded cell mates with this cell, we have another N-F. Now, if this cell here mates with this cell, we have a dose of feeble-mindedness from each one of the parents. Now, according to our definition, and also according to fact, we find that those two people there have a character F, normal. These people L-K whose character F feeble-mindedness does not show, both appear normal. Now here is our individual (indicates) Feeblemindedness comes from that.

Now, if you have two feeble-minded people mating, no matter which way your germ cells mate, you have nothing but feeble-mindedness.

Now, supposing we have here a normal strain where there is no feeble-mindedness——

Mr. Whitehead: What do you call a poor strain?

A. One in which feeble-mindedness is found by reason of birth, not by disease.

(Continues answer:) Now, going back: if this N mates with this N, we still get a poor strain; we get a normal individual, carrying feeble-mindedness. Now, if this person mates with a feeble-minded group, the feeble-mindedness comes out again.

Now, those are perfectly definite laws that have been found and formulated, and apparently the rule is not broken.

I might add to the Judge that insanity follows the same rule. Epilepsy follows the same rule, but we do not call it epilepsy; we call it a neuropathic condition.

(At this time—1:30 *P.* M.—Court is adjourned for luncheon. Hearing is resumed at 2:15 P. M. same afternoon—Nov. 18, 1924.)

[fol. 88] By Col. Strode:

Q. Doctor, to this point your examination has been directed to the development of the general principles and the ascertained rules applicable to cases like that under review here. I now wish to direct your attention to, and solicit your testimony more particularly and specifically as to the girl Carrie Buck. Have you personally made any investigation of Carrie Buck and her ancestry with a view of passing upon the probable heredity of her descendants?

A. I have.

Q. I wish you would please, in your own way, first as simply as you can, tell the Court what your investigations were and give the Court the benefit of the result.

A. I visited the Colony at Lynchburg, saw Carrie Buck personally, also her mother; made a brief study of the two; also read the two case histories. Then I went to Albemarle County where both Carrie and her mother formerly lived. I visited the home where Carrie stayed, also visited as many members of her family as possible. In this connection I made a mental test of her half-sister, Doris Buck; gathered information concerning her half-sister—half-brother, Roy, and gathered other information which—other information concerning five or six members of the immediate family, mostly upon the mother's side. The evidence points to the fact that Emma Buck is a feebleminded woman. That she has had three feebleminded children by unknown fathers. The evidence further points, as gathered from my investigation in Albemarle County, that on the mother's side there are a sufficient number of cases of defective make-up mentally, to lead me to conclude that the Dudley germ plasm, of which Emma Buck is a member,

carries a defective strain in it. I have reason to assume that Emma Buck's father, Richard Harley, was of a defective make-up, but not sufficiently so to include him in the classification of feebleminded or that he would have been a custodial case, but feeble mentally. There are other cases to render the assumption reasonable that the Harley strain also carries feeblemindedness—that is, the germ plasm. That explains the reason that Emma, whose mother was no doubt normal mentally, and whose father was at least a border-line case within the classification of a feebleminded stock, Emma Buck has three feebleminded children, two of whom I have seen personally and the other one whom I consider so from my study of his school behavior and his general behavior reactions.

Q. Did you give Carrie Buck any mental tests to determine her mental capacity?

[fol. 89] A. Yes, sir. I talked to Carrie sufficiently so that with the record of the mental examination—yes, I did. I gave a sufficient examination so that I consider her feebleminded.

Q. Have you a definition of "feebleminded"?

A. Yes, I have.

Q. What is it?

A. A feebleminded person is a person who is so weak mentally that he or she is unable to maintain himself or herself in the ordinary community at large.

Q. Now, what is a socially inadequate person?

A. That is anybody who by reason of any sort of defect or condition is unable to maintain themselves according to the accepted rules of society.

Q. From what you know of Carrie Buck, would you say that by the laws of heredity she is a feebleminded person and the probable potential parent of socially inadequate offspring likewise afflicted?

A. I would.

Q. I read the definition of a feebleminded person to you, taken from section 1075 of the Code of Virginia (Reads from Code of Virginia, 1924):

"The words 'feebleminded person' in this chapter shall be construed to mean any person with mental defectiveness from birth or from an early age so pronounced that he is in capable of caring for himself or managing his affairs, or of being taught to do so, and is unsafe and dangerous

to himself and others, and to the community, and who consequently requires care, supervision, and control for the protection and welfare of himself, others and the community, but who is not classible as an 'insane person' as usually interpreted."

In your opinion is Carrie Buck within that definition?

A. She is.

Q. Did you see Carrie Buck's child?

A. I did.

Q. Were you able to form any judgment about that child?

A. I was.

Q. What is it?

A. I gave the child the regular mental test for a child of the age of six months, and judging from her reactions to the tests I gave her, I decided she was below the average for a child of eight months of age.

Q. I don't think of anything else, Doctor. If I have overlooked anything that you think important——

(Witness suggests question.)

Q. Dr. De Jarnette made some reference to the Callicac family of New Jersey. Have you any knowledge of the history of that family?

[fol. 90] A. I have.

Q. I wish you would supplement what Dr. De Jarnette said about them.

A. The only other point to be added is that on the good side of the Callicac family there were found among the members several that had been college presidents, at least one governor of the state, and a number of senators.

Q. Were there any such types found among those who were descended from the feebleminded?

A. No.

Q. How does that history compare, in a general way, with the history of the Judge family?

A. The history of the defective side of the Callicac family is very similar, except that the Callicac family did not show so much criminality.

Q. I hold in my hand a monograph entitled "The Jukes in 1915;" I wish you would say whether or not this book sets forth your investigations of that family?

A. It does.

Q. It is, I believe, sometimes suggested that environment rather than heredity may be the prime cause of those that are termed feeblminded. What have you to say about that?

A. The environment might react upon the individual in such a way that to the ordinary individual a person might appear feebleminded in his actions, but the environment would not affect their inherent mental ability. In other words, the environment might affect the behavior of the individual, but would not effect—would not essentially change the individual.

Cross-examination.

By Mr. Whitehead:

Q. Doctor, about this bad stock that we have talked about: those people were people with a feebleminded taint in them—the ones you refer to as being bad stock. You say that of these children here, there are certain ones that are not feebleminded, but carry the taint in them?

A. Yes, sir.

Q. They themselves are not feebleminded, but they carry the taint in them?

A. Yes, sir.

Q. You, of course, do not advocate sterilizing those, do you?

A. I think not.

[fol. 91] Q. The idea would be to sterilize them as the feeblemindedness breaks out in the offspring? Sterilizing them as it appears?

A. Yes.

Q. You have made a test of Carrie Buck over here; now, do you think she is capable of taking care of herself or being taught to do so?

A. I do not.

Q. In what way will society be benefitted by turning her out?

A. In two ways; you mean after sterization?

Q. Yes?

A. First, of eliminating the possibility of her having feebleminded children; and I might modify that statement by saying that experience tells us that the average feebleminded person associates with feebleminded consorts, so

that the chances of her having feebleminded children are much greater than of a normal person. First, by eliminating the possibility of her having feebleminded children; and second: by obtaining her discharge from the institution. Her discharge from an institution would necessarily require some sort of supervision.

Q. You say she is incapable of being taught to take care of herself?

A. She is.

Q. And therefore incapable of managing her own affairs?

A. Yes.

Q. And therefore unless somebody took her and looked after her, she would land in the poorhouse?

A. No.

Q. Where would she land?

A. She would probably land in the lower-class area in the neighborhood in which she lives.

Q. But you said she was incapable of taking care of herself?

A. She is incapable of taking care of herself in the manner in which society expects her to.

Q. Do you mean to say that she is incapable of making the home for herself that a perfectly normal woman would?

A. She would not. She would earn a partial living.

Q. Would not the possibility be that she would be a charge on the community?

A. Not under the plan of supervision of which I——

Q. I am not referring to that. You spoke of sterilizing her—suppose you sterilize her and turn her loose—somebody has to take care of her.

A. There are grades in the ability to take care of one's [fol. 92] self. I would say in the case of Carrie Buck she would not be capable of taking care of herself to the fullest extent.

Q. Would she be able to earn a living?

A. She would be able to earn a living—a sufficient living—in the proper kind of home where somebody would be looking after her.

Q. I mean after she had been sterilized—the Doctor said—the definition here in the statute says this, and he says that this is the definition, and I am trying to find out if there are not grades of this definition? The definition

says this: " * * * shall be construed to mean mentally defective from birth or from an early age—that he is incapable of caring for himself or managing his affairs or being taught to do so." Do you mean to say this is the definition we are dealing with now?

A. Yes, sir.

Q. "And that he is unsafe and dangerous to himself and to the community"?

A. Yes, sir.

Q. Well, you would not turn a man loose that is dangerous to the community. Now this statute says society is going to be benefitted?

A. It will be benefitted in that a feebleminded person sterilized, may, under supervision—to be perfectly specific, assuming that she be returned to the home from which she came, that of Mrs. Dobbs in Charlottesville, she would be able to maintain herself in a comparable sufficient condition, from the standpoint of society.

Q. So that the idea necessarily contemplates in returning these girls to society that there be some sort of supervision over them in their outer life by somebody?

A. Yes.

Q. That supervision would, of course, to an extent look after their moral as well as their physical welfare?

A. Yes.

Q. So that your idea of the benefit she would personally receive would not be the benefit that Dr. De Jarnette particularly referred to?

A. To what benefit do you refer?

Q. He said that the chief benefit was that they might go out and enjoy sexual relations.

A. She could enjoy sexual relations, assuming that they were carried out under the sanction of society; that is, assuming that she was married.

Q. And you think that the idea that she could not take care of herself—I thought there were certain grades of [fol. 93] these people called high-grade and low-grade morons; I thought they all came under the general classification of feebleminded?

A. Yes.

Q. And that the high-grade morons were capable of being taught to maintain themselves to some extent?

A. Yes, sir. If they are capable of being taught to maintain themselves, in the meaning of the word accepted by society, they would not come within the definition of the statute.

Q. You wouldn't say that a person who measured up to the average of the Sprouse neighborhood would still be classed as feebleminded?

A. I don't believe I know the Sprouse neighborhood well enough to answer that question.

Q. You made a test of Emma Buck?

A. Yes, sir.

Q. You made the standard Binet test?

A. I made the short test.

Q. And of course you relied on the history?

A. Yes.

Q. You mean by that the commitment papers, and so forth?

A. No, I mean her history as she gave it to me.

Q. Her personal history as she gave it to you?

A. Yes, sir.

Q. Now, you did that also with the girl here, Carrie?

A. Yes, sir. Carrie gave me her personal history, which I also checked up in the field in Charlottesville.

Q. What is the difference between them?

A. A socially inadequate person may be socially inadequate because of being a drug addict, or by reason of being a wanderer or a pauper, but a socially inadequate feebleminded person would be on account of mental deficiency.

Q. Now, this Dudley family—Emma Buck came of the Dudley family?

A. On the mother's side, yes.

Q. And the Harlow family—is that it?

A. That is Emma Buck's family.

Q. That is the Harlow strain. You say both of those strains have feeblemindedness in them?

A. I do.

Q. And are socially inadequate—members of the family?

A. Yes, sir.

(Witness stands aside.)

[fol. 94] Dr. A. S. PRIDDY, a witness of lawful age, having been first duly sworn, testified as follows:

Direct examination.

By Col. Strode:

Q. Dr. Priddy, what is your occupation?

A. Physician; Superintendent of the State Colony for Epileptics and feebleminded located in this county on the suburbs of the City of Lynchburg.

Q. How long have you been officially connected with Virginia State institutions for either the insane, epileptic, or feebleminded?

A. Nearly twenty-one years altogether.

Q. How long have you been Superintendent of the institution where you now are?

A. Fourteen years, six months.

Q. How long have you been receiving in that institution under the statute feebleminded persons?

A. The first about the fifteenth of May, 1914.

Q. In your entire experience in State institutions for the insane, epileptic, and feebleminded, have you been connected with other similar institutions?

A. I was assistant physician first, and then superintendent, of the Southwestern State Hospital at Marion for about five years.

Q. In your twenty-one years of experience in connection with these institutions how many patients in such institutions would you say had passed under your observation?

A. I should say from four to five thousand.

Q. From your petition as Superintendent of your present institution, it appears that one of your patients, Carrie Buck, after a hearing before your Special Board, has been ordered operated upon under the provisions of this act, providing for sterilization, approved March 20, 1924. That act provides that the initial step shall be a petition by you stating the facts of the case and the grounds of your opinion to the best of your knowledge and belief, praying an order to be entered for this sterilization. I wish you would state to the Court why you moved to have this girl sterilized under this act?

A. In the first place, I arrived at the conclusion that she was a highly proper case for the benefit of the Sterilization [fol. 95] Act, by a study of her family history; personal examination of Carrie Buck, and subsequent observation since admission to the hospital covering the whole fields of inquiry connected with the feebleminded.

Q. You tell us you arrived at that conclusion, but you do not answer my question, which is, what are the considerations that lead you to that conclusion?

A. May I refer to my notes? (Witness refers to notebook.)

A. (Continuing:) She was eighteen years old on the second of last July, and according to the natural expectancy, if the purpose of the act chartering this institution are to be observed and carried out, that is to keep her under custody during her period of child-bearing, she would have some thirty years of strict custody and care, under which she would receive only her board and clothes; would be denied all of the blessings of outdoor life and liberty, and be a burden on the State of Virginia of about $200.00 a year for thirty years; whereas if by the operation of sterilization, with the training she has got, she could go out, get a good home under supervision, earn good wages, and probably marry some man of her own level and do as many whom I have sterilized for diseases have done—be good wives—be producers, and lead happy and useful lives in their spheres.

Q. Now, your remark about having sterilized some patients for disease leads to this question: is there any law prohibiting the sterilization of those who by diseased condition of their tubes or other parts require it to be done? Is there any law against it?

A. None whatever. I have a right to do whatever is best for the mental and physical advantage of the patient.

Q. As a matter of fact, was that tested out?

A. Yes, sir.

Q. You were sued in a Richmond court by one of your patients upon whom you had performed this operation?

A. Yes, sir.

Q. That was before this law was passed?

A. Yes, sir.

Q. You defended that on the ground that it was necessary for diseased organs?

A. Yes, sir, that was my defense.

Q. That was the accepted medical practice?

A. Yes, sir.

Q. Take a woman of full mind, if they want that done, is there any reason why it should not be?

A. No, certainly not. It is done by the very best of surgeons.

Q. Girls like Carrie Buck are in the custody of the State? [fol. 96] A. Yes, sir.

Q. And she is legally incompetent to consent?

A. No.

Q. And unless the State sets up some tribunal to settle that for her, she is deprived of the benefits to be derived from that operation?

A. Yes.

Q. Now, coming individually to Carrie Buck again; what were the indications in her personal history leading you to believe that she was a feebleminded person and the probable potential parent of socially inadequate offspring, likewise afflicted?

A. In the first place she has a feebleminded mother, a patient in the Colony under my care, who is of lower mental grade than she.

Q. What is her name?

A. Emma Buck.

Q. She is also a patient in your colony?

A. Yes, sir. She has a mental age of about seven years and eleven months, according to tests put up at that institution, and Carrie has by history and mental examination and observation, proven to be feebleminded herself. There are two direct generations of feebleminded, and besides, while I don't know anything about their kinship, under my care and observation I have got about eight Bucks and Harlowes, all coming from the Albemarle stock. I won't vouch for their relationship—I don't suppose they know. I have one from Rockbridge County just committed; four from Charlottesville or Albemarle; one from Richmond; one at the Reformatory, and the other in Goochland County.

Q. They all trace back to——

A. All trace back to the Albemarle Harlowes and Bucks.

Q. I will ask you again, what leads you to believe that Carrie Buck, if she had children, would be the parent of defective offspring?

A. In the generally accepted theory of the laws of heredity.

Q. What is her age, mentally?

A. Mentally it is nine years—a middle grade moron, and the brother of low-grade.

Q. Might she be sexually sterilized without detriment to her general health?

A. Absolutely she could.

Q. Would you think her welfare would be promoted by such serilization?

A. I certainly do.

Q. Why? And how?

[fol. 97] A. Well, every human being craves liberty; she would get that, under supervision. She would not have a feeling of dependence; she would be earning her own livelihood, and would get some pleasure out of life, which would be denied her in having to spend her life in custodial care in an institution.

Q. Would you think the public welfare would be promoted by her sterilization?

A. Unquestionably. You mean society in its full scope?

Q. Yes, sir.

A. Well, in the first place, she would cease to be a charge on society if sterilized; it would remove one potential source of the incalculable number of descendents who would be feeble-minded. She would contribute to the raising of the general mental average and standard.

Q. Well, taking into consideration the years of experience you have had in dealing with the socially inadequate, and more particularly with the feebleminded, what, in your judgment, would be the general effect, both upon patients and upon society at large, by the operation of this law?

A. It would be a blessing.

Q. To whom?

A. To both society and to the individuals on whom the operation is performed.

Q. Of course these people, being of limited intelligence, lack full judgment of what is best for them, but generally,

so far as patients are concerned, do they object to this operation or not?

A. They clamor for it.

Q. Why?

A. Because they know that it means the enjoyment of life and the peaceful pursuance of happiness, as they view it, on the outside of institution walls. Also they have the opportunity of marrying men of their mental levels and making good wives in many cases.

Q. Have you had personal observation of that with those you have personally sterilized?

A. From 1916 to about the winter of 1917, for tubal diseases, and a few subsequent to that, we sterilized eighty-odd cases. About sixty of them—we got good homes for about sixty of them. Some returned to their families, and after a period of from six to eight years they have been out of the institution and so far as I know, they have never given the officers of the law any trouble. They have earned their livings, and not one has ever been returned to the institution Some eight or ten of the cases are known to Mr. White. Nine or ten have married and made good wives.

[fol. 98] Q. Comparing them with women of the same type, in the first place, that you have had to retain permanently in the institution, which is the better off, from the standpoint of the patients; those that have been sterilized and released, or those kept in the institution?

A. Those who have been sterilized and released are, of course, much better off. Now, the demand for domestics in housework is so great that probably we could get rid of half of our young women of average intelligence, but I have had to abolish it. They go out, and it is so common for them to come back pregnant that I have quit taking the risk. People don't care to take them when there is the constant chance of them becoming mothers.

Q. Except for their liability to become pregnant, is there any other insurmountable obstacle to their being put out in homes that way?

A. No, sir, none whatever.

Q. A good deal has been said in the way of cross examination of some of the witnesses as to the likelihood of the encouragement of vice by their liberation; judging partica-

larly by your experience of some eighty that have been released under those circumstances, have you observed anything to show that would be demoralizing in a general way?

A. I think that is negligible as an objection to sterilization. I have never had any trouble, nor has my attention ever been called to that sort of evil from sterilization, and these women going at large—I mean living out——

Q. As a matter of fact, as to those sixty or eighty you have sterilized under those circumstances, have you undertaken to keep up with them?

A. I have kept up with them quite well. Many of them like to come back and show prosperity aft r they are free. I had a boy, son of a Baptist minister, who was incorrigible—of the imbecile class. He attempted to assault a girl of this community. His father had him steri*l*zed by the complete method. We had a girl who had been sterilized, and he ran away with the sterilized case, and I have never known a couple to get along better. When she died down at Kingsport this fall he came back to the hospital and said, "My wife's dead now, you will have to take care of me."

Q. In other words, two of the socially inadequate could get along together, but not separately?

A. Yes, sir. Mr. Whitehead knows them both.

Mr. Whitehead: Yes, put in there that I know them through being a member of the Special Board of Directors.

[fol. 99] Col. Strode continues:

Q. Doctor, about how many patients, taking both men and women, are there in your institution whose condition you think would be improved and who might be better dealt with for their own good and for the good of society if you were free under the provisions of this law, after a hearing, to have this operation performed?

A. Well, I should think from seventy-five to a hundred women. The men have other anti-social tendencies just as glaring as child-bearing, and we would have to keep them there—they rank below the tramps and hoboes.

Q. But you have some seventy-five women there who are suitable for return to society from every standpoint except

that they are of child-bearing age and alre likely to have illegitimate children?

A. Yes.

Q. Have you facilities to take care of all patients of this class that would be committed to your hospial?

A. That should be, or would be?

Q. That should be?

A. No, sir, we cannot take in more than one in five at the very outside.

Q. Of course that term "should be" is susceptible of interpretation; are you full to capacity?

A. Yes, sir, have a long waiting list. It is impossible to admit them.

Q. If you could get seventy-five vacancies by operating, the condition of these people, in this way, would they fill up with other cases?

A. Yes, sir, and with other cases needing custodial care many of them could be sterilized and got out and we could take care of others.

Q. You have no way, I take it, of knowing how many of those people there are in the State?

A. Well, in Virginia, based on the population of two and a half million, there should be from eight to ten thousand.

Q. That is merely an estimate?

A. Yes, sir, but there has a census been taken in other states—in Massachusetts, for instance—and it runs in a ratio of one to two hundred and fifty. Some of those people wouldn't come within the Virginia definition.

Q. Many of them don't come within the meaning of the Virginia Statute?

A. No, sir, fortunately, or we wouldn't have any hewers of wood or drawers of water.

[fol. 100] Q. But the statutes of Virginia do provide for the taking of the feebleminded and caring for them?

A. Yes, sir.

Q. And in theory, they are all in your charge when they are committed to your hospital?

A. Yes, sir, subject to my jurisdiction and subject to the law.

Q. Doctor, I don't know of anything else, unless you have something that you think I have over-looked.

A. I feel that I should state, in a few words, the strong reason for the operation of the sterilization law is that the State contemplates the detention of these women in the institution during their childbearing period of from twenty-five to thirty years, and by sterilization—an absolutely safe and harmless operation—within three weeks the end that would be attained in twenty-five years would be brought about. They are no worse off when sterilized surgically than when sterilized by nature after being kept locked up twenty-five or thirty years.

Q. In other words, when segregated, as you do them, they are by segregation effectually prevented from propagating?

A. Yes, sir, and there is another matter to be considered: when you keep those women locked up for twenty-five to thirty years, the door of hope is closed to them. They are unable and incapable of getting out and earning their living.

Q. In other words, you have to train them young, and if you postpone their opportunities for training, they get so they cannot do it?

A. Yes, sir, they become helpless and lose confidence in themselves.

Cross-examination.

By Mr. Whitehead:

Q. Doctor, y u say the ratio in Massachusetts of the feeble-minded is about one to two hundred and fifty?

A. Yes, sir, that is the generally accepted radio: epilepties, about one to four hundred.

Q. But I understand the Virginia statute is stricter than it is in Massachusetts?

A. Yes.

Q. Doctor, about these grades of feeble-mindedness—there are grades, aren't there?

A. Yes, sir—low-grade imbecile, commencing at about [fol. 101] four years; then the middle grade, at six or seven years; then eight to ten, low-grade moron; then twelve, the middle-grade; and so on to fourteen or fifteen years—the high grade.

Q. Now, of course, if you sterilize an idiot, society could not be benefited by sterilizing an idiot?

A. Certainly not. They are not supposed to procreate, theoretically.

Q. So that the ones that are contemplated getting out are the high grades?

A. Yes.

Q. And you can teach them to do some work? You, of course, send them out under the care of the Probation Officers of the State?

A. Yes, sir, get them into good families.

Q. And those are the ones to which you allude sending out?

A. Yes.

Q. Now, this girl here, as I understand, is sort of a middle-grade?

A. Yes, she is middle grade.

Q. Is she capable of being taught to take care of herself?

A. Yes, she is capable of being taught to earn her living under proper supervision. She is capable of going back to the home from which she came.

Q. Isn't it a fact, doctor, that by sterilizing them it does tame them down some?

A. It is not supposed to in any way interfere with their sexual passions, but I don't know—it seems to make them better.

Q. Doctor De Jarnette seemed to think it did not have any effect at all?

A. There are no organs removed, and no internal secretions, but they seem to get on better. I don't know the reason.

Q. This operation, I understand, in a girl is just cutting that follopian and tying it back?

A. Yes, sir, that is all.

Q. None of the ovaries are taken out?

A. No, indeed, that is criminal.

Q. Now, most of those girls that were sterilized and went out and got married, most of those were diseased?

A. Yes, sir.

Q. They were of the high-grade type?

A. Yes, sir.

[fol. 102] Redirect examination.

By Colonel Strode:

Q. Doctor, I understood you to say that if this girl could be sterilized the Dobbs home would be open to her?

A. I understand they want her back.

Q. And the only thing to prevent her having an independent home is her child-bearing capacity?

A. Yes, sir. I don't know that they would be willing to assume the risk as she is now.

Q. Now, something was said here about the Wassermann test?

A. Four hundred of our population were tested in 1921, and they ran over 14 per cent. infected.

Q. In other words, fourteen per cent. of the population of your institution were syphiletic?

A. Yes, sir, but now there has evidently been an improvement in the handling of venereal diseases—we don't run over from one-half to one per cent. on the Wassermann test now.

Q. Taking the conclusion you would draw from your experience and observation, would you say there was likely to be any appreciable increase in the prevalence of venereal disease under the operation of this law?

A. I think not. Any man that exposes himself to the risk of a strange woman takes a great risk anyhow.

Recross-examination.

By Mr. Whitehead:

Q. Doctor, this girl, Carrie Buck, is not diseased in any way?

A. Oh, no, perfectly healthy, physically.

(Witness stands aside.)

Col. Strode at this point reads the deposition of Dr. Laughlin.

By Col. Strode (who desires to ask one more question):

Q. Doctor, in a deposition which is here given by Doctor H. H. Laughlin, he gives a short analysis of the hereditary [fol. 103] nature of Carrie Buck, which he bases on a recital of facts purporting to have been gotten from you in regard to Carrie Buck. Does Doctor Laughlin correctly cite in that the facts within your knowledge?

A. It is a correct statement of the true facts.

Mr. Whitehead: Moves to strike out of the record the foregoing deposition read by Col. Strode offering the same objection as to the previous evidence.

Col. Strode: Argues the question to the Court and asks that the judgment of the Special Board of Directors be confirmed.

Here ends all of the evidence.

I hereby certify that the foregoing record is a true transcript of my shorthand notes of the proceedings to the best of my knowledge and belief.

T. H. Thomas, Stenographer.

(Signed) B. T. Gordon, Judge.

Clerk's certificate omitted in printing.

[fol. 104] Minute entry of argument and submission, September 16, 1925, omitted in printing.

[fol. 105] In Supreme Court of Appeals of Virginia

[Title omitted]

Opinion—November 12, 1925

Carrie Buck, by R. G. Shelton, her guardian and next friend, complains of a judgment of the Circuit Court of Amherst County by which Dr. J. H. Bell, Superintendent

of the State Colony for Epilepties and Feeble-minded, was ordered to perform on her the operation of salpingectomy, for the purpose of rendering her sexually sterile. See part of the sterilization act copied in the margin.*

After requiring the service of a copy of the petition and notice of the time and place when the special board of directors will hear and act on the petition upon the inmate and her guardian, and, if the inmate be an infant, upon the living parents, and giving the inmate the right to be represented by counsel, the act further provides:

"The said special board may deny the prayer of the said petition, or if the said special board shall find that the said

[fol. 106] *The Virginia sterilization act (Acts 1924, Chap. 394, p. 569) reads, in part, as follows:

"Whereas, both the health of the individual patient and the welfare of society may be promoted in certain cases by the sterilization of mental defectives under careful safeguard and by competent and conscientious authority; and

"Whereas, such sterilization may be effected in males by the operation of vasectomy and in females by the operation of salpingectomy, both of which said operations may be performed without serious pain or substantial danger to the life of the patient; and

"Whereas, the Commonwealth has in custodial care and is supporting in various State institutions many defective persons who if not discharged or paroled would likely become by the propagation of their kind a menace to society, but who if incapable of procreating might properly and safely be discharged or paroled and become self-supporting with benefit both to themselves and to society; and

"Whereas, human experience has demonstrated that heredity plays an important part in the transmission of insanity, idiocy, imbecility, epilepsy and crime; now, therefore,

"1. Be it enacted by the general assembly of Virginia, That whenever the superintendent of the Western State Hospital, or of the Eastern State Hospital, or of the Southwestern State Hospital, or of the Central State Hospital, or of the State Colony for Epileptics and Feeble-Minded, shall be of opinion that it is for the best interests of the patients and of society that any inmate of the institution under his care should be sexually sterilized, such superintendent is hereby authorized to perform, or cause to be performed by some capable physician or surgeon, the operation of sterilization on any such patient confined in such institution afflicted with heredity forms of insanity that are recurrent, idiocy, imbecility, feeblemindedness or epilepsy; provided that such superintendent shall have first complied with the requirements of this act.

"2. Such superintendent shall first present to the special board of directors of his hospital or colony a petition stating the facts of the case and the grounds of his opinion, verified by his affidavit to the best of his knowledge and belief, and praying that an order may be entered by said board requiring him to perform or have performed by some competent physician to be designated by him in his said petition or by said board in its order, upon the inmate of his institution named in such petition, the operation of vasectomy if upon a male and of salpingectomy if upon a female."

inmate is insane, idiotic, imbecile, feeble-minded, or epileptic, and by the laws of heredity is the probable potential parent of socially inadequate offspring likewise afflicted, that the said inmate may be sexually sterilized without [fol. 107] detriment to his or her general health, and that the welfare of the inmate and of society will be promoted by such sterilization, the said special board may order the said superintendent to perform or to have performed by some competent physician to be named in such order upon the said inmate, after not less than thirty days from the date of such order, the operation of vasectomy if a male or of salpinegectomy if a female; provided that nothing in this act shall be construed to authorize the operation of castration nor the removal of sound organs from the body."

The statute then provided that the said special board, the superintendent, the inmate or his committee, guardian or next friend, may appeal from the order of the board to the circuit court, and that any party to such appeal in the circuit court may apply to the Supreme Court of Appeals for an appeal from the final order therein.

On the 23rd day of January, 1924, Carrie Buck was adjudged to be feeble-minded within the meaning of the Virginia statute, and committed to the State Colony for Epileptics and Feeble-Minded. On September 10, 1924, A. S. Priddy, then superintendent of the Colony, presented to the special board of directors his petition praying for an order that Carrie Buck be sexually sterilized by the surgical operation known as salpingectomy. The hearing was [fol. 108] conducted strictly in accordance with the provisions of the statute, and, upon the evidence introduced before them, the board entered the order prayed for. From this order an appeal was taken by Carrie Buck and R. G. Shelton, her guardian and next friend, to the Circuit Court of Amherst county. Upon the record and evidence introduced at the trial in the circuit court, the judgment complained of was entered, from which this appeal was allowed.

These facts, among others, appear from the evidence:

The operation of salpingectomy is the cutting of the fallopian tubes between the ovaries and the womb, and the tying of the ends next to the womb. The ovaries are left intact and continue to function. The operation of vasec-

tomy consists of the cutting down of a small tube which runs from the testicle, without interference with the testicle. These operations do not impair the general health, or affect the mental or moral status of the patient, or interfere with his, or her, sexual desires or enjoyment. They simply prevent reproduction. In the hands of a skilled surgeon, they are 100 per cent successful in results.

At the time Carrie Buck was committed to the State Colony for Epileptics and Feeble-Minded, she was seventeen years old and the mother of an illegitimate child of de- [fol. 109] fective mentality. She had the mind of a child nine years old, and her mother had theretofore been committed to the same Colony as a feeble-minded person. Carrie Buck, by the laws of heredity, is the probably potential parent of socially inadequate offspring, likewise affected as she is. Unless sterilized by surgical operation, she must be kept in the custodial care of the Colony for thirty years, until she is sterilized by nature, during which time she will be a charge upon the State. If sterilized under the law, she could be given her liberty and secure a good home, under supervision, without injury to society. Her welfare and that of society would be promoted by such sterilization.

The appellant contends that the judgment is void because the Virginia Sterilization Act is repugnant to the provisions of the State and Federal Constitutions, in that—

(a) It does not provide due process of law;

(b) It imposes a cruel and unusual punishment; and

(c) It denies the appellant and other inmates of the State Colony the equal protection of the law.

1. An adjudication by an impartial tribunal vested with lawful jurisdiction to hear and determine the questions involved, after reasonable notice to the parties interested and an opportunity for them to be heard, fulfills all the requirements of due process of law.

[fol. 110] In Commissioners v. Hampton Roads Oyster Co., 109 Va. 585. Judge Cardwell, speaking for the court, said: "It is very true that 'due process of law' requires that a person shall have reasonable notice and opportunity to be heard before an impartial tribunal before any binding decree or order can be made affecting his rights to liberty or property; but this constitutional safeguard can-

not avail appellee upon the uncontradicted facts as to the proceedings before the Board of Fisheries and the Commission of Fisheries touching this controversy. The proceedings were had before the Board of Fisheries and its successor in office, a department of the State government, to whose judgment and discretion the legislature has committed the supervision and control of the natural oyster-beds, rocks and shoals within the waters of the Commonwealth, as well as the oyster industry of the Commonwealth, and made the decision of that tribunal conclusive of all controversies with respect to the same. The proceedings in this case before that tribunal were in strict accordance with the requirements of the statute, and not only did appellee have reasonable notice thereof, but every reasonable opportunity to be heard and was heard from time to time before the order it now complains of was made by the board. It would be difficult to find a case in which the [fol. 111] required 'due process of law' has been more fully met and complied with."

In Reetz v. Michigan, 188 U. S. 505, 47 L. Ed. 563, the following is quoted with approval from the opinion of Mr. Justice Matthews in Hurtado v. California, 110 U. S. 516, after reviewing the authorities and discussing the elements of due process of law:

"It follows that any legal proceeding enforced by public authority, whether sanctioned by age or custom or merely devised in the discretion of the legislative power, in the furtherance of the general public good, which regards and preserves those privileges of liberty and justice, must be held to be due process of law."

See also Murray v. Hoboken L. Co. 18 How. 272, 15 L. Ed. 372; Ex. parte Wall, 107 U. S. 265, 27 L. Ed. 522, 2 Sup. Ct. 569.

The language just quoted in the Reetz case is also quoted with approval by Judge Cardwell in the case of 109 Va., supra.

In Twining v. New Jersey, 211 U. S. 78, Mr. Justice Moody speaking for the court, stated the law thus:

"Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction (Pennoyer v. Neff, 95 U. S. 714, 733, 24 L. Ed. 565; Scott v.

McNeal, 154 U. S. 34, 14 S. Ct. 1108, 38 L. Ed. 896; Old Wayne Life Association v. McDonough, 204 U. S. 8, 27 S. Ct. 236, 51 L. Ed. 345, and that there shall be notice and [fol. 112] opportunity for hearing given the parties, Hovey v. Elliott, 167 U. S. 409, 17 S. Ct. 841, 42 L. Ed. 215; Roller v. Holly, 176 U. S. 398,20 S. Ct. 410, 44 L. Ed. 520, and see Londoner v. Denver, 210 U. S. 373, 28 S. Ct. 708, 52 L. Ed. 1103. Subject to these two fundamental conditions, which seem to be universally prescribed in all systems of law, established by civilized countries, this court has up to this time sustained all state laws, statutory or judicially declared, regulating procedure, evidence and methods of trial, and held them to be consistent with due process of law."

There is no controversy as to the legality or regularity of the proceedings by which appellant was adjudged to be feeble-minded and committed to the State Colony.

The statute under review clearly vests the special board of directors of the State Colony for Epileptics and Feeble-Minded, after notice according to law, with jurisdiction to hear and determine the prayer of any petition filed by the superintendent of the Colony, for the sexual sterilization of an inmate thereof.

In the instant case, the proceeding was strictly in conformity with the statute. The superintendent of the Colony, having first served a copy of the petition and a notice of the time and place it would be presented, on the [fol. 113] inmate, her guardian and her mother, her father being dead, presented to the special board of directors of the Colony his petition, stating the facts of the case and the grounds of his opinion, verified by his affidavit and praying that an order be entered by the board requiring him, or some other competent physician, to perform upon Carrie Buck the operation of salpingectomy. Upon a later day, fixed by the board, the board proceeded in the presence of the inmate, her guardian and her attorney to hear and consider the petition and evidence offered in support of and against the petition, and entered its final order, from which the inmate appealed to the circuit court and subsequently to this court.

The act complies with the requirements of due process of law.

2. The contention that the statute imposes cruel and unusual punishment cannot be sustained.

The act is not a penal statute. The purpose of the legislature was not to punish but to protect the class of socially inadequate citizens named therein from themselves, and to promote the welfare of society by mitigating race degeneracy and raising the average standard of intelligence of the people of the State.

[fol. 114] The evidence shows that the operation, practically speaking, is harmless and 100 per cent safe, and in most cases relieves the patient from further confinement in the Colony.

In State v. Feilin, 70 Wash. 65, which was a criminal case, the court held that the operation of vasectomy was not a cruel punishment.

The constitutional prohibition against cruel and unusual punishment, Virginia Bill of Rights, section 9, has reference to such bodily punishment as involve torture and are inhumane and barbarous, and has no application to the case at bar. Hart v. Commonwealth, 131 Va. 741, and cases cited.

3. Does the statute deny to appellant and other inmates of the State Colony the equal protection of the law? This question must be answered in the negative.

It is not controverted that the State may, in proper cases, by due process of law, take into custody and deprive the insane, the feeble-minded and other defective citizens of the liberty which is otherwise guaranteed them by the Constitution.

The right to enact such laws rests in the police power, which the States did not surrender when they entered the Federal Union, and the exercise of that power the Virginia [fol. 115] Constitution provides shall never be abridged.

Where the police power conflicts with the Constitution, the latter is supreme, but the Courts will not restrain the exercise of such power, except where the conflict is clear and plain.

In Barbier v. Connolly, 113 U. S. 27, 31, Mr. Justice Field, referring to the effect of the Fourteenth Amendment to the Federal Constitution upon the exercise by a State of its police power, says:

"But neither the amendment, broad and comprehensive as it is, nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."

To the same effect is Eubank v. Richmond, 226 U. S. 142.

Under the statutes providing for compulsory vaccination, a surgical operation is performed, as in the instant case, for the good of the individual and of society. Such statutes, although they applied to school children only have been upheld.

In Jacobson v. Massachusetts, 197 U. S. 11, the court, in sustaining a compulsory vaccination statute, said:

"According to settled principles, the police power of a [fol. 116] State must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety. Gibbons v. Ogden, 9 Wheat. (U. S.) 1, 203, Hannibal etc. R. Co. v. Husen, 95 U. S. 465, 470; Boston Beer Co. v. Massachusetts, 97 U. S. 25; New Orleans Gas Co. v. Louisiana Light Co., 115 U. S. 650, 661; Lawton v. Steele, 152 U. S. 133." * * * "The defendant insists that his liberty is invaded when the State subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and therefore hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person. But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good * * *."

As was said by this court in Anthony v. Commonwealth, [fol. 117] 142 Va., —; 34 Va. App., 182:

"The Fourteenth Amendment to the Constitution of the United States does not forbid the passage by the legislature of a law which applies to a class only, provided the classification is reasonable and not arbitrary, and applies alike to all persons similarly situated. Whether the classification is reasonable is a question primarily for the legislature. It is presumed to be necessary and reasonable, and the courts will not substitute their judgment for that of the legislature, unless it is clear that the legislature has not made the classification in good faith."

In Hays v. Missouri, 120 U. S. 68, Mr. Justice Field, speaking for the court, said:

"The Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subject to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

The Supreme Court of the United States, while considering the effect of the equality clause of the Fourteenth Amendment upon class legislation by the State, in Lindsay v. National Carbonic Gas Co., 222 U. S. 79, Ann. Cas. 1912 C. 160, said:

[fol. 118] "A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. * * * When the classification * * * is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. * * * One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

See also 1 Dillon, Mun. Corp. (5th ed.), sec. 146.

Disregarding other classes of mental defectives, upon whom the statute operates, the purpose of the act is to

promote the welfare and prevent procreation by those who have been, or may hereafter be judicially ascertained to be feeble-minded and are inmates of the State Colony for Epileptics and Feeble-Minded. The status of a feeble-minded person, who comes under the operation of the sterilization act, is not fixed until such patient, after judicial commitment to the Colony, shall have undergone expert observation for at least two months and been subjected to the Benet Simon measuring scale of intelligence, or some [fol. 119] other approved test of mentality, and found to be feeble-minded. Code 1919, sec. 1083.

Code, section 1078, designates those who have not been adjudged to be feeble-minded, as persons "supposed to be feeble-minded." The sterilization act has no reference to the latter class except in so far as they may be legally ascertained to belong to the former and are committed to the Colony. It cannot be said, as contended, that the act divides a natural class of persons into two and arbitrarily provides different rules for the government of each. The two classes existed before the passage of the sterilization act. The female inmate, unlike the woman on the outside, was already deprived of the power of procreation by segregation, and must remain so confined until sterilized by nature, unless it is ascertained that her welfare and the welfare of society will be promoted by her sterilization under the act. There can be no discrimination against the inmates of the Colony, since the woman on the outside, if in fact feeble-minded, can, by the process of commitment and afterwards a sterilization hearing, be sterilized under the act.

Appellant's rely upon Smith v. Board of Examiners of Feeble-Minded, Epilepties, etc. (N. J.), 88 Atl., 963. The New Jersey act provided for the sterilization of epilepties who were "inmates confined in the several charitable institutions in the counties and State." The Court held the [fols. 120 & 121] act unconstitutional because the statute arbitrarily created two classes and applied the statutory remedy to that one of the classes to which it had the least application, and therefore denied Smith, who was an inmate of a charitable institution, the equal protection of the laws. The right to sterilize did not, as in Virginia, depend upon whether the welfare of the patient would be

promoted by the operation. For the reasons given in discussing the Virginia act, we decline to follow the New Jersey case.

The Indiana act was held invalid in Smith v. Williams, 131 N. E. 2, because it denied the appellee due process of law.

We have found no case involving similar statutes where the court has held that the State is without power to enact such laws, provided it be exercised through a statute which affords due process of law and equal protection of the laws to those affected by it.

For the foregoing reasons, we are of the opinion that the Virginia sterilizatilon act is based upon a reasonable classification and is valid enactment under the State and Federal Constitutions.

Affirmed.

A copy. Teste: H. Stewart Jones, C. C.

A copy. Teste: H. H. Wayt, Clerk.

[fol. 122] In Supreme Court of Appeals of Virginia

[Title omitted]

Judgment—November 12, 1925

This cause, which is pending in this Court at its place of session at Staunton, having been fully heard but not determined at said place of session; this day came here the parties by counsel, and the Court having maturely considered the transcript of the record of the judgment aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the judgment complained of. It is therefore considered that the same be affirmed, and that the plaintiff in error pay to the defendant in error thirty dollars damages, and also his costs by him expended about his defence herein.

Which is ordered to be entered in the order book here and forthwith certified, together with a certified copy of the opinion in this cause, to the Clerk of this Court at Staunton,

who will enter this order in the order book there and certify it to the said Circuit Court.

A copy. Teste: H. Stewart Jones, C. C.

A copy. Teste: H. H. Wayt, Clerk.

[fol. 123] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 124] President's certificate to clerk omitted in printing.

Clerk's certificate to president omitted in printing.

[fol. 125] In Supreme Court of Appeals of Virginia

Writ of Error

United States of America, ss:

(Seal)

The President of the United States of America to the Honorable the Judges of the Supreme Court of Appeals of the State of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between Carrie Buck, by R. G. Shelton, her guardian and next friend, and J. H. Bell, Superintendent of the State Colony for Epileptics and Feeble-Minded, wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity; a manifest error hath happened, to the great damage of the said Carrie Buck, by R. G. Shelton, her guardian and next friend, as by her complaint appears. We being willing that error,

if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and ac-
[fol. 126] cording to the laws and customs of the United States, should be done.

Witness the Honorable William H. Taft, Chief Justice of the United States, the 27th day of January, in the year of our Lord one thousand nine hundred and twenty six.

Joseph P. Brady, Clerk, by C. K. Moran, Deputy Clerk District Court United States, Eastern District of Virginia. (Seal United States District Court, Eastern District of Virgina.)

Allowed: Robert R. Prentis, President Supreme Court of Appeals of Virginia.

[fol. 127] IN SUPREME COURT OF APPEALS OF VIRGINIA

[Title omitted]

PETITION FOR WRIT OF ERROR AND ORDER ALLOWING SAME

Considering herself aggrieved by the final decision of the Supreme Court of Appeals of Virginia, in rendering judgment against her in the above-entitled case, plaintiff hereby prays a writ of error from said decision and judgment to the U. S. Supreme Court, and an order fixing the amount of a supersedeas bond.

And the said Carrie Buck by R. G. Shelton, her guardian and next friend, assigns the following errors in the records and proceedings of the said case:

The Supreme Court of Appeals of Virginia erred in holding and deciding that the Virginia Act of Assembly, ap-

proved March 20th, 1924, Acts of Assembly 1924, page 569, was valid. The validity of the said Act of Assembly was denied and drawn in question by the plaintiff in error on the grounds of its being repugnant to the Constitution of the United States and in contravention thereof.

The said errors are more particularly set forth as follows:

The Supreme Court of Appeals of Virginia erred in holding and deciding that the aforesaid Act of Assembly did not abridge the privileges and immunities of this plaintiff and other inmates of the said State Colony for Epilepties and Feeble-minded as guaranteed by the Fourteenth [fol. 128] Amendment of the U. S. Constitution, in that,

First. (a) That said Act of Assembly did afford this plaintiff due process of law.

(b) That said Act of Assembly did not deny to this plaintiff and other inmates of said Colony the equal protection of the laws.

Second. That said Act of Assembly did not impose a cruel and unusual punishment.

For which errors the plaintiff, Carrie Buck by R. G. Shelton, her guardian and next friend, prays that the said judgment of the Supreme Court of Appeals of Virginia, dated 12th day of November 1925, be reversed and a judgment rendered in favor of the plaintiff, Carrie Buck by R. G. Shelton, her guardian and next friend, and for costs.

I. P. Whitehead, Attorney for Carrie Buck, by R. G. Shelton, Her Guardian and Next Friend.

Supreme Court of Appeals of Virginia, ss:

Let the writ of error issue upon the execution of a bond by the said Carrie Buck by R. G. Shelton, her guardian and next friend, in the sum of Five Hundred Dollars, such bond when approved to act as a supersedeas.

Dated 27 day of January, 1926.

Robert R. Prentis, President of the Supreme Court of Appeals of Virginia.

[fol. 129] Bond on writ of error for $500.00 omitted in printing.

[fols. 130 & 131] Writ of error omitted; printed side page 125 ante.

[fol. 132] Citation, in usual form, showing service on Aubrey E. Strode, omitted in printing.

[fol. 133] Return to writ of error omitted in printing.

[fol. 134] Certificate of lodgment omitted in printing.

[fol. 135] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 136] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION BY PLAINTIFF IN ERROR OF PARTS OF THE RECORD TO BE PRINTED, WITH PROOF OF SERVICE.—Filed February 15, 1926

To the Clerk of said Court:

Points

The points on which the plaintiff in error in this case relies are that the Act of Assembly of Virginia approved March 20th, 1924, Acts 1924, page 569, is unconstitutional and void because it is in conflict with the provisions of the Constitution of the United States, in that

First. It does not provide due process of law.

Second. It denies to this plaintiff and other inmates of the State Colony for Epilepties and Feeble-Minded, and similar State institutions in Virginia, the equal protection of the laws.

Third. It imposes a cruel and unusual punishment.

Fourth. The said Act of Assembly is a bill of attainder.

Record to be Printed

The part of the Record in this case necessary for its consideration is all of the record certified by the Clerk of the Supreme Court of Appeals of Virginia, with the exception of the Plaintiff's Petition for a Writ of Error from the Circuit Court of Amherst County to the Supreme Court of Ap-
[fols. 137 & 138] peals of Virginia, which appears in the printed Record of the proceeding in said Court of Appeals, and begins at the top of page 1 and ends at the bottom of page 8. All of the record with the above exception should be printed.

Respectfully, I. P. Whitehead, Counsel for Plaintiff in Error.

Due and timely notice of the points on which the plaintiff in error expects to rely in the prosecution of her writ of error in this suit, and of the parts of the record designated to be printed, is accepted.

Aubrey E. Strode, Counsel for Defendant in Error.

February 13th, 1926.

[fol. 139] [File endorsement omitted.]

Endorsed on cover: File No. 31,681. Virginia Supreme Court of Appeals. Term No. 292. Carrie Buck, by R. G. Shelton, her guardian and next friend, plaintiff in error, vs. J. H. Bell, superintendent of the State Colony for Epileptics and Feeble-Minded. Filed February 6th, 1926. File No. 31,681.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. 292.

CARRIE BUCK, BY R. G. SHELTON, HER GUARDIAN AND NEXT FRIEND, PLAINTIFF IN ERROR,

v.

J. H. BELL, SUPERINTENDENT OF THE STATE COLONY FOR EPILEPTICS AND FEEBLE-MINDED, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

I. P. WHITEHEAD,
Attorney for Plaintiff in Error.

INDEX

TABLE OF CASES CITED.

IN THE

Supreme Court of the United States

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No. 292.

CARRIE BUCK, BY R. G. SHELTON, HER GUARDIAN AND NEXT FRIEND, PLAINTIFF IN ERROR,

v.

J. H. BELL, SUPERINTENDENT OF THE STATE COLONY FOR EPILEPTICS AND FEEBLE-MINDED, DEFENDANT IN ERROR.

In Error to the Supreme Court of Appeals of Virginia.

BRIEF FOR PLAINTIFF IN ERROR.

JURISDICTIONAL FACTS.

The judgment to be reviewed by this Honorable Court was rendered by the Supreme Court of Appeals of Virginia on the 12th day of November, 1925. (R. 108.)

In the lower Court the plaintiff in error contended that the Act of Assembly of Virginia, approved March 20, 1924 (Acts 1924, Chap. 394, p. 569), printed in full in the Appendix hereto, and under which this case arose, abridged the privileges and immunities of this plaintiff and other persons similarly situated as guaranteed by the Constitution of the United States, because said Act of Assembly does not provide due process of law; it denies to this plaintiff and other inmates of the State Colony for Epilepties and Feeble-Minded the equal protection of the laws and imposes a cruel and unusual punishment (R. 111). The Supreme Court of Appeals of Virginia sustained the constitutionality of said Act of Assembly, holding that said Act was a lawful exercise of the police power of the State; that it provided for a hearing before judgment; was based upon a reasonable classification; was not a penal statute and did not impose punishment and was a valid enactment under State and Federal constitutions. The opinion of the Court,

delivered November 12, 1925, has not been reported in the official volumes of Virginia Reports, but is a part of this record. (R. 98).

On January 27th, 1926, a writ of error was awarded to the judgment of the Supreme Court of Appeals of Virginia to this Honorable Court under the provisions of Section 237 Judicial Code (R. 109).

Statement of the Case.

On January 23rd, 1924, Carrie Buck, the plaintiff in error, was adjudged to be feeble-minded within the meaning of the Virginia statutes (R. 18) and committed to the State Colony for Epileptics and Feeble-Minded (R. 19); that under authority of said Act of Assembly, approved March 20th, 1924, Acts 1924, p. 569 (Appendix), the Special Board of Directors of the State Colony for Epileptics and Feeble-Minded, on the 10th day of September, 1924, entered an order directing that Carrie Buck be sexually sterilized by means of a surgical operation known as salpingectomy (R. 27). On October 3rd, 1924, Carrie Buck, by R. G. Shelton, her guardian and next friend, appealed from the order of the said Special Board of Directors to the Circuit Court of Amherst County (R. 7) and said appeal was heard on November 18th, 1924.

The evidence taken at this trial shows that there are several grades of feeble-minded persons, ranging from low grade imbeciles with mentalities of four years up to high grade morons with mentalities of fourteen to fifteen years (R. 95); that there are eight to ten thousand such feeble-minded people in Virginia (R. 94), with about seventy-five to one hundred confined in State institutions who should be sterilized (R. 93); that by segregation in State institutions these people are effectually prevented from propagating (R. 95); that salpingectomy is a surgical operation involving the opening of the abdominal cavity of a female on both sides and the cutting and tieing back of the severed ends of the Fallopian tubes; that vasectomy is the operation for males and consists of cutting and tieing the severed ends of the tube running up from the testicles (R. 68); both operations are reasonably safe in the hands of a skilled surgeon (R. 68). The operation if suc-

cessfully performed has no ill effects on the general health of the patient (R. 69), nor does it abate sexual desire or in any way interfere with sexual gratification. All it does is to prevent reproduction (R. 68).

Carrie Buck is perfectly healthy physically (R. 97); was eighteen years old at the time of the trial with a mental age of nine years, a "middle grade moron" (R. 91). She has no criminal record and was a good worker in the home of Mrs. Dobbs with whom she lived until she became pregnant and was taken in custody by the State authorities and committed to the State Colony for Epileptics and Feeble-Minded.

On April 13th, 1925, the Circuit Court of Amherst County rendered a judgment affirming the order of the said Special Board of Directors and ordered Dr. J. H. Bell, Superintendent, to perform upon Carrie Buck the operation of salpingectomy (R. 3).

On June 8th, 1925, a writ of error and supersedeas was awarded to said judgment, by the Supreme Court of Appeals of Virginia. The case was heard in the said Supreme Court of Appeals and on November 12th, 1925, the said Court handed down its opinion sustaining the constitutionality of the said Act of Assembly (R. 98), and entered judgment affirming the judgment of the Circuit Court of Amherst County (R. 108), from which judgment a writ of error and supersedeas was allowed to this Honorable Court (R. 109).

Errors to be Urged.

The Supreme Court of Appeals of Virginia erred in deciding that the Act of Assembly of Virginia, approved March 20th, 1924, Acts of Assembly 1924, page 569 (Appendix), did not abridge the privileges and immunities of this plaintiff and other inmates of the State Colony for Epileptics and Feeble-Minded as guaranteed by the Fourteenth Amendment of the Constitution of the United States; holding:

(a) That said Act of Assembly did afford this plaintiff due process of law.

(b) That said Act of Assembly did not deny to this plaintiff and other inmates of said Colony the equal protection of the laws.

Argument.

The question before this Honorable Court is one of law, i. e., whether the said Act of Assembly (Appendix) is a valid exercise of the police power of the State and therefore a valid enactment under the Constitution of the United States. There is no assignment of error to any part of the evidence and reference thereto is made only for the purpose of enabling the Court to fully understand the nature of the case before it.

The Supreme Court of Appeals of Virginia by its decision in this case (R. 108) declared that in the exercise of its police power the State of Virginia may enact and enforce laws providing for surgical operations upon certain persons in its custody, purely eugenical in their effect. It is not pretended that the Act of Assembly under consideration was adopted as a health measure. The operation authorized, if successfully performed, does not affect the health of the person operated upon for good or bad. Neither is it a moral measure. The nature of the patient is not changed; sexual desire is not abated nor sexual gratification interfered with. The sole effect of the operation is to prevent procreation by rendering the patient sterile. In short, it is a eugenical measure and nothing more.

Police Power.

The police power of the State has been said to be a law of necessity which was not surrendered by the States when they entered into the American Union, and that under this power a state may enact reasonable laws to promote the health, morals and general public good. This is a great power and far-reaching. Nevertheless, the Constitution of the United States is the supreme law of the land and whenever the police power of the State conflicts with the Constitution, the police power must give way. Therefore, the State cannot under the guise of a police regulation take into custody its unfortunate but unoffending citizens and over their protest subject them to surgical operation in violation of rights guaranteed by the Constitution of the United States; one of which rights is the inherent right to go through life with full bodily integrity, possessed of all those powers and faculties with which

God has endowed them. The right to bodily integrity existed before either State or Federal Constitution was adopted and is as old as Anglo-Saxon civilization.

Eugenic Laws and Regulations, Ancient and Modern.

Eugenics is not a new subject. The idea of selective breeding is as old as recorded history.

Plato in his Ideal Republic, Book 3, Chap. 17, says:

> "You will establish then in your state the science of medicine * * * and along with it a corresponding system of judicature, both of which together may carefully provide for such of your citizens as are naturally well disposed both in body and mind; while as regards the opposite, such as are diseased in their bodies, they should let die, but as for those who are thoroughly evil and incurable as to the soul, these they are themselves to put to death."

The historian Diodorus Siculus in Book 2, Chap. 4, speaking of the eugenic laws of Ceylon, says:

> "Those that are lame or have any other weakness or infirmity are put to death."

The same author gives the following reason why the "Troglodites" were all of strong bodies. He says:

> "All the Troglodites are circumcised like the Egyptians, except those who by reason of some accident are called cripples; for those only, of all those that inhabit these straights, have from their infancy that member (which in others is only circumcised) wholly cut off with a razor." Book 3, Chap. 2.

The Twelve Tables of Rome Law 3, Table 4, provided:

> "If a father has a child born, which is monstrously deformed, let him kill him immediately."

Even in enlightened Greece, Archidamus seems to have run counter to the Spartan breeding idea for he was fined for having married a diminutive wife.

So in modern America the "science of medicine" has taken up the ancient idea of selective breeding and laws have been enacted providing for surgical operations to prevent the reproduction of the so-called socially inadequate. But in each instance with the exception of the Virginia Act, such of these laws as were purely eugenical in their effect have been declared by the Courts to be unconstitutional and void because they infringed upon certain human rights and liberties protected by either State or Federal Constitution.

A brief review of these cases will be helpful before taking up the discussion under appropriate Points.

In New Jersey an act authorizing the sterilization of certain defectives confined in State institutions, by means of surgical operation, for the purpose of preventing procreation, was declared unconstitutional as denying to the complaining party the "equal protection of the laws" guaranteed by the Fourteenth Amendment of the Constitution of the United States. *Smith* v. *Board of Examiners*, 85 N. J. Law 46.

In *Haynes* v. *Lapeer*, 201 Mich. 138, the Michigan sterilization law was declared unconstitutional for the same reason.

In the more recent case of *Smith* v. *Command*, decided by the Supreme Court of Michigan on June 18th, 1925, not yet reported in the official reports but appearing in 204 N. W. page 140, this principle was reaffirmed as to Sec. 7 (sub-division 2) of Public Acts 1923, No. 285.

In *Davis* v. *Berry*, 216 Fed. 413, the Iowa sterilization law was declared unconstitutional as a bill of attainder providing for cruel and unusual punishment and not providing due process of law.

In *Feilins* case, 70 Wash. 65, the Court held that the Washington statute providing for vasectomy as a part of the punishment for a certain crime was not repugnant to the constitutional prohibition against cruel and unusual punishment. The controlling principle in Feilins case was quite different from the case at bar. The Washington statue was a penal law and the operation of vasectomy was imposed as a part of the punishment for the crime committed. The Virginia law is not punitive but is a eugenical measure. The plaintiff in error here has been convicted of no

crime and the right of the State to take her into custody and sexually sterilize her by means of the surgical operation of salpingectomy is based solely upon grounds that she is of defective mentality and is of child-bearing age.

If as is claimed by the advocates of sterilization, feeble-mindedness is hereditary and its evil effects so far-reaching that the state must in the interest of the general public good stamp it out at any cost, then it is submitted this end must be accomplished by some measure which does not violate the constitutional rights of citizens.

Point One.

The Act of Assembly of Virginia (Appendix) Does Not Provide Due Process of Law Guaranteed by the Fourteenth Amendment of the Constitution of the United States.

The plaintiff in error contends that the operation of salpingectomy as provided for in said Act of Assembly is illegal in that it violates her constitutional right of bodily integrity and is therefore repugnant to the due process of law clause of said Fourteenth Amendment.

In *Munn* v. *Illinois*, 94 U. S. 143, this Court in passing upon the due process clause of the Fourteenth Amendment of the Constitution, defined the meaning of the term "deprivation of life" thereby forbidden, said:

> "The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The deprivation not only of life but whatever God has given to everyone with life * * * is protected by the provision in question."

The operation of salpingectomy clearly comes within the definition. It is a surgical operation consisting of the opening of the abdominal cavity and the cutting of the Fallopian tubes with the result that sterility is produced.

It is true the Act of Assembly (Appendix) does provide for a hearing before the sterilization operation can be performed and that hearing may be in a court of law in case of appeal, but this fact standing alone does not meet the constitutional requirement

of due process of law. In determining whether the constitutional requirement has been observed we must look to the substance rather than the form of the law. *Chicago R. Co.* v. *Chicago*, 166 U. S. 226, *Simmons* v. *Craft*, 182 U. S. 427; for form of the procedure cannot convert the process used into due process of law, if the result is to illegally deprive a citizen of some constitutional right. *Chicago R. Co.* v. *Chicago, supra.* Neither can the State make a proceeding due process of law by declaring it to be such. If this was not so, there would be no restraint upon the power of the Legislature. *Murry* v. *Hoboken L. & I. Co.*, 18 How. 272, *Hurtado* v. *California, &c.*, 110 U. S. 516. The cases cited in the opinion of the Supreme Court of Appeals of Virginia (R. 98), to sustain its finding that said Act of Assembly does provide due process of law, are all cases dealing with lawful proceedings. The Virginia Court quotes with approval from the opinion of Justice Matthews in *Hurtado* v. *California, supra*, as follows:

> "It follows that any legal proceedings enforced by public authority, whether sanctioned by age and custom or newly devised in the discretion of the legislative power, in the furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law."

We do not controvert the proposition of law as here stated. But if as the plaintiff in error contends, the result of the proceeding under the Virginia Act is illegal, in that it violates her bodily integrity and is a deprivation of her life and liberty, then the above cited case may with propriety be quoted in support of the contention that said Act of Assembly does not provide due process of law. For as is laid down in this decision, the test of due process of law is that the proceedings shall be legal, preserving the liberty of the citizen.

The inherent right of mankind to go through life without mutilation of organs of generations needs no constitutional declaration. That right existed long before the Constitution was framed; was not lost or surrendered to legislative control when the government was created and is beyond the reach of the State

agency known as the police power. Therefore any law or proceedings, such as is had under the Virginia statute, which trespasses upon this inherent right of bodily integrity, is illegal, and being illegal is a denial to the injured citizen of the due process of law guaranteed by the Fourteenth Amendment of the Constitution of the United States.

Point Two.

The Act of Assembly of Virginia (Appendix) Denies to the Plaintiff and Other Inmates of the State Colony for Epileptics and Feeble-Minded the Equal Protection of the Law Guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The provisions of the Act of Assembly of Virginia (Appendix) as its title clearly indicates are applicable only to those mentally defective persons who are confined in State institutions. It does not apply to any person of this class who is not so confined in a State institution. The fact that there are many thousand more of this class in Virginia at large than in the custodial care of the State is admitted. (R. 94.)

If the said Virginia Act of Assembly were otherwise a legal, constitutional enactment, it is respectfully submitted that it violates the equality clause of the Fourteenth Amendment of the Constitution of the United States in that while the avowed purpose of the law is to stamp out the so-called evil of feeble-mindedness, this law is made to apply to only a portion of those so afflicted.

That the State may enact laws which by reason of peculiar circumstances affect some persons or class of persons only is not denied, but "the mere fact of classification is not sufficient to relieve a statute of the reach of the equality clause of the Fourteenth Amendment." *Gulf, Colorado R. R. Co.* v. *Ellis*, 165 U. S. 150; and the classification must be based upon some reasonable grounds in the light of the purpose sought to be attained by the Legislature and must not be an arbitrary selection. *Gulf, Colorado R. R. Co.* v. *Ellis, supra.*

The object of the said Virginia Act of Assembly is to prevent the reproduction of certain mentally defective people, among

them the feeble-minded, and the vice of all such laws as the Virginia Act of Assembly lies in the fact that they do not apply to all of the class to which they are naturally related and which possess a common disability. The common disability of the class under discussion is feeble-mindedness, but as stated above, the Virginia law applies only to a very small portion of the class and that portion less likely to reproduce their kind on account of the restraints under which they live. In this view of the matter it is obvious that the selection under the Virginia statute is a narrow arbitrary one which bears no reasonable relation to the avowed purpose of the law.

The Legislature can fix the class, but having done so it cannot arbitrarily divide it into two portions and legislate differently for each portion. This rule of law is well stated in 6 Ruling Case Law, Sec. 375, as follows:

> "The legislature cannot take what might be termed a natural class of persons, split this class in two and then arbitrarily designate the dissevered factions of the original unit as two classes and thereupon enact different rules for the government of each."

In support of the text is cited *State* v. *Julow*, 129 Mo. 163, and *State* v. *Walsh*, 136 Mo. 400, and other authorities.

In making classifications in law the true principle requires something more than a designation by which the class may be identified. The characteristics which serve as a basis for classification must be of such a nature as to mark the class so designated as peculiarly requiring exclusive legislation. *Alexander* v. *Elizabeth*, 56 N. J. Law 71. There is nothing to mark the feeble-minded confined in Virginia State institutions as requiring this exclusive legislation. In fact, on the assumption that the State institutions are properly managed, there is no necessity for such legislation, since by segregation in said institutions they are effectually prevented from procreating (R. 95) and to prevent procreation by these people is the object of the sterilization operation provided for in the law.

To meet this well recognized principle of law the Supreme Court of Appeals of Virginia, speaking through Judge West, in its opinion (R. 107) says:

> "The two classes existed before the passage of the sterilization act. The female inmate, unlike the woman on the outside, was already deprived of the power of procreation by segregation."

One would infer from the quoted statement that this plaintiff was contending solely for the right to procreate. No such claim was made in the court below. We concede that the State has the right to segregate the feeble-minded and thereby deprive them of the "power to procreate." The State has exercised this right for a long time without question, but we deny that the state has the right to force this plaintiff, who is at present segregated in the State Colony and "deprived of the power of procreation," to undergo the surgical operation of salpingectomy for the purpose of rendering her sterile. If the purpose of the operation is to prevent procreation, why sterilize one already deprived of that power? Why sterilize the few segregated in State institutions who have no opportunity to procreate and leave beyond the reach of the legislation the eight or ten thousand like people at large in the state propogating their kind at will?

That the class selected under the Virginia law is singularly narrow and arbitrary seems clear.

An excellent statement of the law of classification is found in the opinion of Justice Steere in *Haynes* v. *Lapeer*, 201 Mich. 138. He says:

> "It is elementary that legislation which, in carrying out a public purpose for the common good, is limited by reasonable and justifiable differentiation to a distinct type or class of persons is not for that reason unconstitutional because class legislation, if germane to the object of the enactment, and made uniform in its operation upon all persons of the class to which it naturally applies; but, if it fails to include and effect alike all persons of the same class, and extends immunities or privileges to one portion and denies them to others

of like kind, by unreasonable or arbitrary subclassification, it comes within the constitution prohibition against class legislation."

The recent case of *Smith* v. *Command*, decided by the Supreme Court of Michigan on June 18th, 1925, not yet reported in the official reports but appearing in 204 N. W. 140, arose under Public Acts 1923, No. 285. This law provided for a hearing before a court of law after which the court might make an order for treatment or operation to render the defective incapable of procreation whenever the facts required by Section 7 shall be found. The Court declared sub-division 2 of Section 7 of said Act unconstitutional and void. Sub-division 2 of Section 7 of said Act is as follows:

"2(a) That said defective manifests sexual inclinations which make it probable that he will procreate children unless he be closely confined or be rendered incapable of procreation; and

(b) That he would not be able to support and care for his children if any and such children would probably become public charges by reason of his own mental defectiveness."

The Court said:

"The second division of the classification in section 7 presents a different situation. It brings within the operation of the law only those of the feeble-minded class *who are unable* to support any children they might have, and whose children probably will become public charges by reason thereof. The evident purpose of the Legislature in enacting the second division was to protect the public from being required to support the children of mentally defective persons. In attempting to do so, an element inconsistent with the beneficial purpose of the statute was introduced. It is not germane to the object of the enactment as expressed in its title. It carves a class out of a class. In that it does not apply to those of the class who may be financially able to support their children, it is not made applicable alike to all members of the class. We think that it is subject to the constitutional objection dis-

cussed by Justice Steere in *Haynes* v. *Lapeer Circuit Judge, supra,* and by Justice Sharpe in *Peninsular Stove* v. *Burton,* 220 Mich. 284, 189 N. W. 880."

In the very able opinion delivered by Mr. Justice Garrison in *Smith* v. *Board of Examiners,* 85 N. J. Law 46, the New Jersey sterilization law was declared repugnant to equality clause of the Fourteenth Amendment of the Constitution. This case is strikingly like the case at bar and we think fully sustains the position of plaintiff in error here. We quote the following from Justice Garrison's opinion:

"Turning our attention now to the classification on which the present statute is based and laying aside criminals and persons confined in penal institutions with which we have no present concern, it will be seen that—as to epileptics with which alone we have to do—the force of the statute falls wholly upon such epileptics as are 'inmates confined in the several charitable institutions in the counties and State.' It must be apparent that the class thus selected is singularly narrow when the broad purpose of the statute and the avowed object sought to be accomplished by it are considered. The objection, however, it not that the class is small as compared with the magnitude of the purpose in view, which is nothing less than the artificial improvement of society at large, but that it is singularly inept for the accomplishment of that purpose in this respect, viz., that if such object requires the sterilization of the class so selected, then fortiori does it require the sterilization of the vastly greater class who are not protected from procreation by their confinement in State or county institutions.

"The broad class to which the legislative remedy is normally applicable is that of epileptics, i. e., all epileptics. * * * For not only will society at large be just as injuriously affected by the procreation of epileptics who are not confined in such institutions as it will be by the procreation of those who are so confined, but the former vastly outnumber the latter and are in the nature of things vastly more exposed to

the temptation and opportunity of procreation, which indeed in the cases of those confined in a presumably well conducted institution is reduced practically to nil.

"The particular vice, therefore, of the present classification is not so much that it creates a sub-division based upon no reasonable basis, as that having thereby arbitrarily created two classes, it applies the statutory remedy to that one of those classes to which it has the least, and in no event a sole application, and to which indeed, upon the presumption of the proper management of our public institutions, it has no application at all. When we consider that such statutory scheme necessarily involves a suppression of personal liberty and a possible menace to the life of the individual who must submit to it, it is not asking too much that an artificial regulation of society that involves these constitutional rights of some of its members shall be accomplished, if at all, by a statute that does not deny to the persons injuriously affected the equal protection of the laws guaranteed by the Federal Constitution.

. . . . . .

"The conclusion we have reached is that, without regard to the power of the State to subject its citizens to surgical operations that shall render procreation by them impossible, the present statute is invalid in that it denies to the prosecutrix of this writ the equal protection of the laws to which under the Constitution of the United States she is entitled."

Smith v. *Board of Examiners, supra.*

In an endeavor to differentiate the rule of law which controlled the decision in *Smith* v. *Board of Examiners, supra*, and the case at bar, the Supreme Court of Appeals of Virginia said:

"The right to sterilize did not as in Virginia depend upon whether the welfare of the patient would be promoted by the operation" (R. 108) by protecting "the class of socially inadequate persons from themselves." (R. 104.)

The operation authorized under the New Jersey law was salpingectomy, the same as in Virginia, and its results are undoubtedly

the same. The situation of the prosecutrix of the writ in New Jersey and the plaintiff in error here are identical—both confined in State institutions. The only difference in the cases is that one was an epileptic and the other a feeble-minded person.

With all due deference to the learned Judge who delivered the opinion in the case under review, we submit his reasoning is not sound. If by the last quoted clause is meant protection against procreation, we respectfully ask what more protection is needed. They are already segregated in State institutions which effectually prevent them from procreating. (R. 95.)

But there is no merit in this feature of the Virginia law. The fact of the welfare of the patient being promoted by the operation, is not susceptible of definite proof. At best, it is a mere guess. It seems obvious then that this idea of benefit to the patient was written into the Virginia law for the sole purpose of enabling any court which might favor the selective breeding idea to find some ground upon which to base an opinion upholding the constitutionality of the Act.

In the light of the admitted fact, that by segregation in a state institution this plaintiff in error and others of her class so confined are already deprived of the power to procreate, and that there are vast numbers of the same class at large in the State procreating and propogating their kind, it seems clear that the Virginia law in limiting the surgical operation to those feeble-minded people confined in State institutions arbitrarily carved a class out of a natural class and applied the statutory remedy to that one of those classes to which it has the least application; certainly not the sole application.

It is respectfully submitted that the Act of Assembly (Appendix) denies to this plaintiff in error the equal protection of the laws guaranteed to her by the Fourteenth Amendment to the Constitution of the United States.

Danger of Legislation of this Character.

If the Virginia Act of Assembly under consideration is held to be a valid enactment, then the limits of the power of the state (which in the end is nothing more than the faction in control of

the government) to rid itself of those citizens deemed undesirable according to its standards by means of surgical sterilization have not been set. We will have "established in the state the science of medicine and a corresponding system of judicature." A reign of doctors will be inaugurated and in the name of science new classes will be added, even races may be brought within the scope of such a regulation and the worst forms of tyranny practiced. In the place of the constitutional government of the fathers we will have set up Plato's Republic.

Respectfully submitted,

CARRIE BUCK,
By R. G. SHELTON, her guardian
and next friend,
Plaintiff in Error.

By I. P. WHITEHEAD,
Attorney of Record.

APPENDIX.

Chap. 394—An Act to provide for the sexual sterilization of inmates of State institutions in certain cases. (S. B. 281.)

APPROVED MARCH 20, 1924.

Whereas, both the health of the individual patient and the welfare of society may be promoted in certain cases by the sterilization of mental defectives under careful safeguard and by competent and conscientious authority, and

Whereas, such sterilization may be effected in males by the operation of vasectomy and in females by the operation of salpingectomy, both of which said operations may be performed without serious pain or substantial danger to the life of the patient, and

Whereas, the Commonwealth has in custodial care and is supporting in various State institutions many defective persons who if now discharged or paroled would likely become by the propogation of their kind a menace to society, but who if incapable of procreating might properly and safely be discharged or paroled and become self-supporting with benefit both to themselves and to society, and

Whereas, human experience has demonstrated that heredity plays an important part in the transmission of insanity, idiocy, imbecility, epilepsy and crime, now, therefore

1. Be it enacted by the general assembly of Virginia, That whenever the superintendent of the Western State Hospital, or of the Eastern State Hospital, or of the Southwestern State Hospital, or of the Central State Hospital, or of the State Colony for Epileptics and Feeble-Minded, shall be of opinion that it is for the best interests of the patients and of society that any inmate of the institution under his care should be sexually sterilized, such superintendent is hereby authorized to perform, or cause to be

performed by some capable physician or surgeon, the operation of sterilization on any such patient confined in such institution afflicted with hereditary forms of insanity that are recurrent, idiocy, imbecility, feeble-mindedness or epilepsy; provided that such superintendent shall have first complied with the requirements of this act.

2. Such superintendent shall first present to the special board of directors of his hospital or colony a petition stating the facts of the case and the grounds of his opinion, verified by his affidavit to the best of his knowledge and belief, and praying that an order may be entered by said board requiring him to perform or to have performed by some competent physician to be designated by him in his said petition or by said board in its order, upon the inmate of his institution named in such petition, the operation of vasectomy if upon a male and of salpingectomy if upon a female.

A copy of said petition must be served upon the inmate together with a notice in writing designating the time and place in the said institution, not less than thirty days before the presentation of such petition to said special board of directors when and where said board may hear and act upon such petition.

A copy of said petition and notice shall also be so served upon the legal guardian or committee of the said inmate if such guardian or committee be known to the said superintendent, and if there be no such guardian or committee or none such be known to the said superintendent, then the said superintendent shall apply to the circuit court of the county or city in which his said institution is situated, or to the judge thereof in vacation, who by a proper order entered in the common law order book of the said court shall appoint some suitable person to act as guardian of the said inmate during and for the purposes of proceedings under this act, to defend the rights and interests of the said inmate, and the guardian so appointed shall be paid by the said institution a fee of not exceeding twenty-five dollars as may be determined by the judge of the said court for his services under said appointment and such guardian shall be served likewise with a copy of the aforesaid petition and notice. Such guardian may be removed or dis-

charged at any time by the said court or the judge thereof in vacation and a new guardian appointed and substituted in his place.

If the said inmate be an infant having a living parent or parents whose names and addresses are known to the said superintendent, they or either of them as the case may be shall be served likewise with a copy of the said petition and notice.

After the notice required by this act shall have been so given, the said special board at the time and place named therein, with such reasonable continuances from time to time and from place to place as the said special board may determine, shall proceed to hear and consider the said petition and the evidence offered in support of and against the same, provided that the said special board shall see to it that the said inmate shall have opportunity and leave to attend the said hearings in person if desired by him or if requested by his committee, guardian or parent served with the notice and petition aforesaid.

The said special board may receive and consider as evidence at the said hearing the commitment papers and other records of the said inmate with or in any of the aforesaid named institutions as certified by the superintendent or superintendents thereof, together with such other legal evidence as may be offered by any party to the proceedings.

Any member of the said special board shall have power to administer oaths to any witnesses at such hearing.

Depositions may be taken by any party after due notice and read in evidence if otherwise pertinent.

The said special board shall preserve and keep all record evidence offered at such hearings and shall have reduced to writing in duplicate all oral evidence so heard to be kept with its records.

Any party to the said proceedings shall have the right to be represented by counsel at such hearings.

The said special board may deny the prayer of the said petition or if the said special board shall find that the said inmate is insane, idiotic, imbecile, feeble-minded or epileptic, and by the laws of heredity is the probable potential parent of socially inadequate offspring likewise afflicted, that the said inmate may be sexually sterilized without detriment to his or her general health, and that

the welfare of the inmate and of society will be promoted by such sterilization, the said special board may order the said superintendent to perform or to have performed by some competent physician to be named in such order upon the said inmate, after not less than thirty days from the date of such order, the operation of vasectomy if a male or of salpingectomy if a female; provided that nothing in this act shall be construed to authorize the operation of castration nor the removal of sound organs from the body.

3. From any order so entered by the said special board the said superintendent or the said inmate or his committee or guardian or parent or next friend shall within thirty days after the date of such order have an appeal of right to the circuit court of the county or city in which the said institution is situated, which appeal may be taken by giving notice thereof in writing to any member of the said special board and to the other parties to the said proceeding, whereupon the said superintendent shall forthwith cause a copy of the petition, notice, evidence and orders of the said special board certified by the chairman or in his absence by any other member thereof, to the clerk of the said circuit court, who shall file the same and docket the appeal to be heard and determined by the said court as soon thereafter as may be practicable.

The said circuit court in determining such appeal may consider the record of the proceedings before the said special board, including the evidence therein appearing together with such other legal evidence as the said court may consider pertinent and proper that may be offered to the said court by any party to the appeal.

Upon such appeal the said circuit court may affirm, revise or reverse the orders of the said special board appealed from and may enter such order as it deems just and right and which it shall certify to the said special board of directors.

The pendency of such appeal shall stay proceeding under the order of the special board until the appeal be determined.

4. Any party to such appeal in the circuit court may within ninety days after the date of the final order therein, apply for an appeal to the supreme court of appeals, which may grant or refuse such appeal and shall have jurisdiction to hear and determine the

same upon the record of trial in the circuit court and to enter such order as it may find that the circuit court should have entered.

The pendency of an appeal in the supreme court of appeals shall operate as a stay of proceedings under any orders of the special board or of the circuit court until the appeal be determined by the said supreme court of appeals.

5. Neither any of said superintendents nor any other person legally participating in the execution of the provisions of this act shall be liable either civilly or criminally on account of said participation.

6. Nothing in this act shall be construed so as to prevent the medical or surgical treatment for sound therapeutic reasons of any person in this State, by a physician or surgeon licensed by this State, which treatment may incidentally involve the nullification or destruction of the reproductive functions.

Acts of Assembly, 1924, pp. 569, 570, 571.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. 292

CARRIE BUCK, BY ETC., PLAINTIFF IN ERROR.

v.

DR. J. H. BELL,
SUPERINTENDENT OF STATE COLONY FOR EPILEPTICS AND FEEBLE-MINDED,

DEFENDANT IN ERROR.

FROM THE SUPREME COURT OF APPEALS OF VIRGINIA.

BRIEF FOR DEFENDANT IN ERROR.

The Constitutionality of the Virginia Act for the Sterilization of Hereditary Defectives.

The Limits of the Power of the State over the Welfare of the Unfit and over the Propagation of their Kind.

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STATEMENT.

This writ of error brings under review a judgment of the Supreme Court of Appeals of Virginia sustaining the constitutionality of the Virginia Sterilization Statute and affirming an order of the Circuit Court of Amherst County, Virginia.

which approved an order of the Special Board of Directors of the State Colony for Epileptics and Feeble-Minded requiring the sexual sterilization, by the operation of salpingectomy, of Carrie Buck, an eighteen-year-old feeble-minded patient of that Colony, pursuant to the provisions of an Act of the General Assembly of Virginia to provide for the sexual sterilization of inmates of State Institutions in certain cases, approved March 20, 1924, Acts of Assembly, Virginia, 1924, p. 569; Michie's Code, Secs., 1095h-1095m.

This Act is printed *in extenso* as an Appendix to the Brief filed here for the Plaintiff in Error.

The opinion of the Supreme Court of Appeals of Virginia, rendered November 12, 1925, appears at pages 98 to 108 of the Record and in Virginia Reports, Vol. 143, page 310; 130 S. E. Rep. 516.

The judgment under review entered the same day appears on pages 108 and 109 of the record.

The errors assigned challenge the constitutionality of the said act as being repugnant to the Constitution of the United States in providing, as is alleged, for the deprivation of liberty without due process of law, imposing a cruel and unusual punishment and denying to those subject to the act the equal protection of the laws. (Rec., pp. 110-111.)

THE FACTS.

Commitment to the Colony.

Carrie Buck, then seventeen years of age, but of a mental age of only nine years, and the mother of an illegitimate child, was under an inquisition duly held in Albemarle County, Virginia, committed to the State Colony for Epileptics and Feeble-Minded on January 23, 1924. (Rec., pp. 12-23.)

Carrie's child was afterwards found to give evidences of defective mentality, while Carrie's mother, Emma Buck, of a

mental age of seven years, had previously been committed to the same Colony, as a feeble-minded person where with Carrie she remains in the custody of the State. Carrie's father is dead.

Previous to Carrie's commitment to the Colony she had for some years lived as a member of the household with a respectable family who had received her into their home when very young, taken good care of her in return for the simple services she might render despite her affliction and who would be glad to have her back again but for the risk they would have to run of her bearing other children. (Rec., p. 97.)

Sterilization Petition.

Dr. A. S. Priddy, an eminent physchiatrist and surgeon, Superintendent of the Colony, when Carrie was committed, after due observation confirmed the finding that she was a feeble-minded person, and after the passage of the sterilization statute being of opinion that Carrie was within its provisions and that both her welfare and the welfare of society would be promoted by her sterilization so that she might properly be returned to the liberty of the good home still open to her in Albemarle County instead of being kept in confinement for at least the more than twenty years that still remained of her child-bearing period of life, presented to the Special Board of Directors of the Colony a petition under the act, praying authority to perform or to have performed upon her the operation of salpingectomy. (Rec., pp. 8-10.)

Proceedings Before the Special Board of Directors.

In accordance with the requirements of the act notice of the application with a copy of the petition were duly served upon Carrie and upon her mother and upon Robert G. Shelton duly appointed by the Circuit Court of Amherst County as a suitable person to act as Carrie's guardian during and for the purposes

of the proceedings. (Rec., pp. 11-23-24-25-26-27-28.)

After such notice and a hearing in due course the said Special Board found that Carrie was feeble-minded and by the laws of heredity the probable potential parent of socially inadequate offspring likewise afflicted, that she might be sexually sterilized without detriment to her general health, that her welfare and the welfare of society would be promoted by such sterilization, and ordered that the operation of salpingectomy be performed upon her. (Rec., pp. 28-29.)

From this order her guardian and Carrie by her guardian as next friend, by a notice in writing stating the grounds of appeal, appealed, as allowed by the Act, to the Circuit Court of Amherst County. (Rec., pp. 1-8.)

The Proceedings in the Circuit Court.

In that court there was a full trial of the case, Carrie and her guardian appearing in person and being also represented by counsel.

The Evidence.

At the hearing of the appeal in the Circuit Court there was introduced in evidence the record of Carrie's commitment to the Colony, the record of the hearing upon the sterilization application before the Special Board of Directors of the Colony and the evidence of a number of witnesses by deposition and in person.

The Testimony of Witnesses.

Dr. H. H. Laughlin, of Long Island, New York, Assistant Director of the Eugenics Record Office of the Carnegie Institution of Washington, Expert Eugenical Agent for the Committee on Immigration and Naturalization of the House of Representatives and Eugenics Associate of the Psychopathic Laboratory of the Municipal Court of Chicago and author of a 502-page volume on Eugenical Sterilization in the United

States, gave in testimony by deposition an analysis of the hereditary nature of Carrie Buck (Rec., pp. 29-41.) After reciting Carrie's family and personal history, Dr. Laughlin finds: "All this is a typical picture of a low grade moron. . . . The family history record and the individual case histories, if true, demonstrate the hereditary nature of the feeble-mindedness and moral delinquency described in Carrie Buck. She is therefore a potential parent of socially inadequate or defective offspring." (Rec., p. 35.)

Dr. Laughlin further testified: "Let me say, also, that in the archives of the Eugenics Record Office there are many hundreds of manuscript pedigrees of families with feeble-minded members. These pedigrees prove conclusively that both feeble-mindedness and other intelligence levels are, in most cases, accounted for by hereditary qualities," that the operation of "salpingectomy in the female has but little physiological effect other than sexual sterility." . . . "Modern individual and family history study can, in practically all cases of social inadequacy locate the hereditary factor, if it exists. Thus if a particular person is a 'potential parent of degenerates' the eugenical field worker can generally supply the state authorities with material for a sound diagnosis. . . . Modern eugenical sterilization is a force for the mitigation of race degeneracy which, if properly used, is safe and effective. I have come to this conclusion after a thorough study of the legal, biological and eugenical aspects, and the practical working out, of all of the sterilization laws which have been enacted by the several states up to the present time. . . . I believe the Virginia statute is, in the main, one of the best laws thus far enacted in that it has avoided the principal eugenical and legal defects of previous statutes, and has incorporated into it the most effective eugenical features and the soundest legal principles of previous laws."

Various witnesses having personal knowledge of Carrie and of her family history and of her relatives testified that she was

feeble-minded and immoral, that her child was not normal, that her mother was feeble-minded and that other relatives of hers were below the normal mentally. (Rec., pp. 42-61.)

Dr. J. S. DeJarnette, Superintendent of the largest of the Virginia State Hospitals for the Insane, and having treated more than eleven thousand patients, testified that feeble-mindedness may be inherited, that it is incurable, that it is judicially ascertainable whether or not any particular individual is feeble-minded, that there are certain laws of heredity which are ascertainable and which may be relied on in determining whether or not a feeble-minded patient is likely to be a potential parent of socially inadequate off-spring, "well you find feeble-mindedness runs in families. . . . If it is inherited he is likely to transmit it, and I think Mendel's law covers it very well. . . . Now, you take a feeble-minded woman, if she has a child it is very apt to be—that one-fourth of them will be feeble-minded. If both parents are feeble-minded, it is practically certain that the children will all be feeble-minded," that the operation of salpingectomy may be performed upon a woman without detriment to her general health, that in his hospital there were about twenty patients that with benefit to themselves and to society might be brought under this statute, that having heard the evidence as to Carrie he thought she was the probable potential parent of socially inadequate offspring by the laws of heredity, that her offspring would probably be so affected and that her welfare and the welfare of society would be promoted by her sterilization. (Rec., pp. 63-75.)

Dr. A. H. Estabrook, of the Carnegie Institution, having been engaged for fourteen years in assisting in the investigation leading to a formulation of the laws of heredity and having also made some personal investigations of the family history of Carrie, gave in testimony the result of those investigations tending to show the laws of heredity in general with their application to the present case. (Rec., pp. 75-88.)

"A. We find that in general characteristics or traits of the individual, either physical or mental, are inherited in pairs. A person has a characteristic or he does not have it, or he may have the opposite of it. As an example, a person may have six fingers. A normal exception to the condition of six fingers is the ordinary condition of five fingers. We know from observation, and have formulated the law that where we have the six-fingered condition, it is what is called the dominant characteristic; the normal condition of five fingers being the recessive characteristic. That is the dominant and recessive characteristic going together.

Q. Doctor, we are not interested in fingers. I should have narrowed my question to what have you discovered as regards to feeble-mindedness.

A. That reacts in the same respect to the normal, the feeble-minded being the recessive condition, the normal condition of mind being dominant.

Q. What else have you ascertained to govern this?

A. Where feeble-mindedness is found in two strains the two strains meeting, feeble-mindedness will show up in one-fourth of the children. Where feeble-mindedness is found in one parent, that is, and only in the strain—that is, the other parent being normal but coming from a strain where there is feeble-mindedness, one-half of the children will be feeble-minded. Where feeble-mindedness is found in both parents, all the children will be feeble-minded. The rule, so far as we can find, has no exception. Two normal appearing parents, both of whom come from defective strains, will in all probability have at least one-fourth of feeble-minded children. That gives the explanation of where the feeble-minded child comes from in families that are apparently normal. The blood is bad. They carry the defective germ plasm, and where two defectives' germ plasms meet, the effect again appears.

Q. I wish you would illustrate that a little—about the germ plasms. Take cases where you have a feeble-minded father and a feeble-minded mother, or a normal father and a feeble-minded mother, or a normal father and a normal

mother, or what you call a feeble-minded strain in one of them, and show how your laws work out?

A. Two feeble-minded parents will always have feeble-minded children. One hundred per cent of the children of two feeble-minded parents will be feeble-minded. Where one parent is feeble-minded and the other parent normal, we will have one-half the children feeble-minded—if that parent comes from a defective strain. If, however, in this case the parent on one side—the normal parent mated to a feeble-minded woman—if the normal parent comes from a good stock family where there is no mental deficiency; in the first generation none of the children will appear feeble-minded, but all of those children will carry a taint of feeble-mindedness. If one of those children marries back into a good strain, the feeble-mindedness will still be covered. It is a recessive characteristic, but if one of those children mates into a bad stock, irrespective of whether the mate is feeble-minded or not, if he marries into bad stock one-fourth to one-half of the children will be feeble-minded. In other words, it is a trait that is present in the germ plasm of the reproductive part of the individual that determines the offspring, and not the individual. We look upon individuals now as merely offshoots of the stock—the germ plasm is what goes through." (Rec., pp. 78-87.)

Dr. A. S. Priddy, Superintendent of the Colony, with twenty-one years of experience in this and similar institutions, testified as to Carrie: (Rec., pp. 88-98.)

"I arrived at the conclusion that she was a highly proper case for the benefit of the Sterilization Act, by a study of her family history; personal examination of Carrie Buck, and subsequent observation since admission to the hospital covering the whole fields of inquiry connected with the feeble-minded. . . . She was eighteen years old on the second of last July, and according to the natural expectancy, if the purposes of the act chartering this institution are to be observed and carried out, that is to keep her under custody during her period of child-bearing, she would

have some thirty years of strict custody and care, under which she would receive only her board and clothes; would be denied all of the blessings of outdoor life and liberty, and be a burden on the State of Virginia of about $200.00 a year for thirty years; whereas, if by the operation of sterilization, with the training she has got, she could go out, get a good home under supervision, earn good wages, and probably marry some man of her own level and do as many whom I have sterilized for diseases have done—be good wives—be producers, and lead happy and useful lives in their spheres."

". . . She has a feeble-minded mother, a patient in the Colony under my care, who is of lower mental grade than she."

Q. "What is her name?

A. Emma Buck.

Q. She is also a patient in your colony?

A. Yes, sir. She has a mental age of about seven years and eleven months, according to tests put up at that institution, and Carrie has by history and mental examination and observation proved to be feeble-minded herself. There are two direct generations of feeble-minded, and besides, while I don't know anything about their kinship, under my care and observation I have got about eight Bucks and Harlowes, all coming from the Albemarle stock. I won't vouch for their relationship—I don't suppose they know. I have one from Rockbridge County just committed; four from Charlottesville or Albemarle; one from Richmond; one at the Reformatory, and the other in Goochland County.

Q. They all trace back to—

A. All trace back to the Albemarle Harlowes and Bucks.

Q. I will ask you again, what leads you to believe that Carrie Buck, if she had children, would be the parent of defective offspring?

A. In the generally accepted theory of the laws of heredity.

Q. What is her age, mentally?

A. Mentally it is nine years—a middle-grade moron, and the brother of low grade.

Q. Might she be sexually sterilized without detriment to her general health?

A. Absolutely she could.

Q. Would you think her welfare would be promoted by such sterilization?

A. I certainly do.

Q. Why? And how?

A. Well, every human being craves liberty; she would get that, under supervision. She would not have a feeling of dependence; she would be earning her own livelihood, and would get some pleasure out of life, which would be denied her in having to spend her life in custodial care in an institution.

Q. Would you think the public welfare would be promoted by her sterilization?

A. Unquestionably. You mean society in its full scope?

Q. Yes, sir.

A. Well, in the first place, she would cease to be a charge on society if sterilized; it would remove one potential source of the incalculable number of descendants who would be feeble-minded. She would contribute to the raising of the general mental average and standard.

Q. Well, taking into consideration the years of experience you have had in dealing with the socially inadequate, and more particularly with the feeble-minded, what, in your judgment, would be the general effect, both upon patients and upon society at large, by the operation of this law?

A. It would be a blessing.

Q. To whom?

A. To both society and to the individuals on whom the operation is performed.

Q. Of course these people, being of limited intelligence, lack full judgment of what is best for them, but generally, so far as patients are concerned, do they object to this operation or not?

A. They clamor for it.

Q. Why?

A. Because they know that it means the enjoyment of life and the peaceful pursuance of happiness, as they view it, on the outside of institution walls. Also they have the opportunity of marrying men of their mental levels and making good wives in many cases.

Q. Have you had personal observation of that with those you have personally sterilized?

A. From 1916 to about the winter of 1917, for tubal diseases, and a few subsequent to that, we sterilized eighty-odd cases. About sixty of them—we got good homes for about sixty of them. Some returned to their families, and after a period of from six to eight years they have been out of the institution and so far as I know, they have never given the officers of the law any trouble. They have earned their livings, and not one has ever been returned to the institution. Some eight or ten of the cases are known to Mr. White. Nine or ten have married and made good wives."

. . . . . .

Q. "Doctor, about how many patients, taking both men and women, are there in your institution whose condition you think would be improved and who might be better dealt with for their own good and for the good of society if you were free under the provisions of this law, after a hearing, to have this operation performed?

A. Well, I should think from seventy-five to a hundred women. The men have other anti-social tendencies just as glaring as child-bearing, and we would have to keep them there—they rank below the tramps and hoboes.

Q. But you have some seventy-five women there who are suitable for return to society from every standpoint

except that they are of child-bearing age and are likely to have illegitimate children?

A. Yes.

Q. Have you facilities to take care of all patients of this class that would be committed to your hospital?

A. That should be, or would be?

Q. That should be?

A. No, sir, we cannot take in more than one in five at the very outside.

Q. Of course that term 'should be' is susceptible of interpretation. Are you full to capacity?

A. Yes, sir, have a long waiting list. It is impossible to admit them.

Q. If you could get seventy-five vacancies by operating, the condition of these people, in this way, would they fill up with other cases?

A. Yes, sir, and with other cases needing custodial care many of them could be sterilized and got out and we could take care of others."

. . . . . .

Q. "But the statutes of Virginia do provide for the taking of the feeble-minded and caring for them?

A. Yes, sir.

Q. And in theory, they are all in your charge when they are committed to your hospital?

A. Yes, sir, subject to my jurisdiction and subject to the law."

. . . . . .

"I feel that I should state, in a few words, the strong reason for the operation of the sterilization law is that the State contemplates the detention of these women in the institution during their child-bearing period of from twenty-five to thirty years, and by sterilization—an absolutely safe and harmless operation—within three weeks the end that would be attained in twenty-five years would be brought about. They are no worse off when sterilized

surgically than when sterilized by nature after being kept locked up twenty-five or thirty years.

Q. In other words, when segregated, as you do them, they are by segregation effectually prevented from propagating?

A. Yes, sir, and there is another matter to be considered: when you keep these women locked up for twenty-five to thirty years, the door of hope is closed to them. They are unable and incapable of getting out and earning their living.

Q. In other words, you have to train them young, and if you postpone their opportunities for training, they get so they cannot do it?

A. Yes, sir, they become helpless and lose confidence in themselves."

. . . . . .

Q. "Doctor, I understand you to say that if this girl could be sterilized the Dobbs' home would be open to her?

A. I understand they want her back.

Q. And the only thing to prevent her having an independent home is her child-bearing capacity?

A. Yes, sir. I don't know that they would be willing to assume the risk as she is now." (Rec., p. 97.)

The Findings of the Circuit Court.

The Circuit Court sustained the statute as a constitutional enactment, found as facts established by the evidence, that the said said Carrie Buck is feeble-minded as defined by the statutes of Virginia for such cases made and provided, that she is a duly committed inmate and patient of the State Colony for Epileptics and Feeble-Minded; that Emma Buck, the mother of the said Carrie Buck, is also feeble-minded and an inmate of the said institution; that the said Carrie Buck is the mother of an apparently feeble-minded infant; that the said Carrie Buck is afflicted with a hereditary form of feeble-mindedness; that the said Carrie Buck was duly proceeded against by the said

A. S. Priddy, Superintendent, before the Special Board of Directors of the State Colony for Epileptics and Feeble-Minded, in strict accordance with all the requirements and provisions of the said Act approved March 29, 1924; and the Court having further found as facts upon the evidence adduced that the said Carrie Buck is feeble-minded and by the laws of heredity is the probable potential parent of socially inadequate offspring, likewise afflicted, that she may be sexually sterilized without detriment to her general health and that her welfare and that of society will be promoted by her sterilization, affirmed the order for the sterilization operation. (Rec., pp. 3-4.)

IN THE SUPREME COURT OF APPEALS OF VIRGINIA.

Carrie Buck by her guardian and next friend, and the said guardian for Carrie Buck, prosecuted an appeal from the said order of the Circuit Court to the Supreme Court of Appeals of Virginia.

In the petition for that appeal the constitutionality of the said Act was again assailed, the errors assigned being that:

(a) It does not provide due process of law.

(b) It denies to petitioner and other inmates of said institution the equal protection of the laws.

(c) It imposes a cruel and unusual punishment.

The Supreme Court of Appeals of Virginia held:

(1) That "the act complied with the requirements of due process of law" in that the act provides "an adjudication by an impartial tribunal vested with lawful jurisdiction to hear and determine the questions involved, after reasonable notice to the parties interested and an opportunity for them to be heard," which "fulfills all the requirements of due process of law." (Rec., pp. 101-103.)

(2) That "the contention that the statute imposes cruel and unusual punishment cannot be sustained.

"The act is not a penal statute. The purpose of the legislature was not to punish but to protect the class of socially inadequate citizens from themselves, and to promote the welfare of society by mitigating race degeneracy and raising the average standard of intelligence of the people of the state."

. . . . . .

"The constitutional prohibition against cruel and unusual punishment, Virginia Bill of Rights, Section 9, has reference to such bodily punishments as involve torture and are inhumane and barbarous, and has no application to the case at bar." (Rec., p. 104.)

(3) That the statute does not "deny to appellant and other inmates of the Colony the equal protection of the law," because,

(a) It is a valid exercise of the police power.

(b) The classification made by the statute is reasonable, in that under the statutes of Virginia all persons found by an inquisition to be feeble-minded are subject to commitment to the Colony. "The status of a feeble-minded person, who comes under the operation of the sterilization act is not fixed until such patient, after judicial commitment to the Colony, shall have undergone expert observation for at least two months and been subjected to the Binet Simon measuring scale of intelligence, or some other approved test of mentality, and found to be feeble-minded. Code 1919, Sec. 1083."

The case is brought to this Court for review under the provisions of Section 237 of the judicial code, the decision of the Supreme Court of Appeals of Virginia, the highest court of that state, having sustained the validity of the Virginia Sterilization Statute cited which was there drawn in question on the ground that it was repugnant to the Constitution of the United States.

Novelty of the Question Presented.

It will be observed that the principal question presented is of first impression in this jurisdiction and quite novel in any jurisdiction.

What power has society to protect its afflicted members from themselves and itself from them, and beyond that, what is its power and duty as to the coming generation in respect of the multiplication of socially inadequate defectives?

If as tradition tells us some of the ancients exposed to the elements the more puny infants that they might not grow up to lives of suffering and to burden the State, the idea of limiting in some way the propagation of the unfit it not altogether new. Has human progress in the development of surgery and of the science of heredity and eugenics brought it to pass that a like end may be accomplished by society more humanely and even with benefit to the already afflicted individual?

Evidently the General Assembly of Virginia so concluded when it enacted the Act under review for the preamble to the Act discloses that this exercise of the legislative will was based upon the motive to promote both the welfare of the individual patient and of society by surgical processes to be performed in the light of ascertained laws of heredity that through such an operation the patient might be restored to the larger liberty of he world outside of custodial walls and this without jeopardy to society.

That such legislation should have passed both houses of the General Assembly of Virginia by unanimous votes when the legislative records of comparatively recent years show that like measures were theretofore overwhelmingly defeated suggests a growth of both sentiment and knowledge upon the subject.

Indeed, the laws of heredity are of but recent discovery. Says Professor East, of Harvard University, in a most informing essay in *Scribner's Magazine* for July, 1925, upon "Heredity—The Master Riddle of Science":

> "This is a courtesy title like that of the retired army officer. Heredity has been until lately the master riddle of science. Twenty-five years ago it was a synonym for mystery and a text for discourses on the unknowable. Not

> so to-day. In a quarter of a century laws of heredity have been formulated as definite and precise as those of physics and chemistry. The mechanics of the two tiny cells which unite to hand the spark of life from generation to generation in our world of animals and plants have been analyzed with a clear-cut accuracy hardly to be expected when dealing with such entangled phenomena."

It is just within this past twenty-five years as the light of science has brought the laws of heredity from the shadows of ignorance that legislative bodies have sought to use the knowledge of these laws in solving the problems of promoting the welfare and of the propagation of defectives.

Court Decisions Upon Similar Enactments.

Some sixteen of the states have endeavored by statute to deal with this problem.

The Virginia statute is believed to be unique among and to be distinguished from other similar enactments in that it requires a judicial determination that the welfare of the patient will be promoted as a condition precedent to a sterilization order.

The State of Washington by statute (Rem. and Bal. Code, §2287) provided for the operation of vasectomy for the prevention of procreation as a part of the punishment that might be imposed in certain cases. The Constitution of Washington (Art. 1, §14) contained a prohibition against the infliction of cruel punishments. In Feilin's Case (70 Wash. 65, 126 Pac. 75, 32 Ann. Cas. 512), decided by the Washington Supreme Court, September 3, 1912, it was said:

> "Guided by the rule that, in the matter of penalties for criminal offenses, the courts will not disturb the discretion of the legislature save in extreme cases, we cannot hold that vasectomy is such a cruel punishment as cannot be inflicted upon appellant for the horrible and brutal crime of which he has been convicted."

In New Jersey the Board of Examiners created by "an act to authorize and provide for the sterilization of feeble-minded (including idiots, imbeciles and morons), epileptics, rapists, certain criminals and other defectives" (N. J. P. L., 1911, 353), ordered that the operation of salpingectomy be performed on an epileptic inmate of a state charitable institution as the most effective operation for the prevention of procreation. In the case of *Smith* v. *Board of Examiners of Feeble-Minded* (N. J.—88 Atl. 963, 32 Ann. Cas. 515), the Court held that the statute in question was based on a classification that bore no reasonable relation to the object of such police regulation, and hence denied to the individuals so selected (inmates of state institutions) the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The foregoing may, perhaps, be accurately termed both the earliest and the two leading cases upon the subject.

It will be observed that while the motive of the Washington statute was punitive, it was also eugenical in its operation. The New Jersey statute was purely eugenical. Other statutes suggest a therapeutic motive—the welfare of the patient though in operation they would be eugenical also.

Similar legislation has run a varied course both with the law-making authorities and in the courts.

The governors of Pennsylvania (Pennypacker, 1905; Sproul, 1921), Oregon (Chamberlin, 1909), Vermont (Fletcher, 1913), and Nebraska (Davis, 1913) have vetoed sterilization bills passed by their respective states. Of these states, however, Nebraska and Oregon finally succeeded in securing sterilization statutes.

In *Rudolph Davis* v. *William H. Berry et al.* (216 Fed. 419) the Iowa statute was held invalid as a bill of attainder, providing for a cruel and unusual punishment and having no provision for due process of law. This case came to this Court but

was not here decided upon the merits because pending the appeal the statute involved was superseded by the enactment of a substantially different statute upon the same subject. *Berry* v. *Davis*, 242 U. S. 468.

No other case involving a like statute appears to have reached this Court.

In *Haynes* v. *Williams* (166 N. W. 938—Mich.), the Michigan statute was held unconstitutional as not affording those affected by it the equal protection of the laws.

The Supreme Court of Indiana, May 11, 1921, in *Smith* v. *Williams*, 131 N. E. 2 (Ind.), held the Indiana statute invalid, saying:

> "In the instant case the prisoner has no opportunity to cross-examine the experts who decide that this operation should be performed upon him. I has no chance to bring experts to show that it should not be performed; nor has he a chance to controvert the scientific question that he is of a class designated in the statute. And wholly aside from the proposition of cruel and unusual punishment, and infliction of pains and penalties by the legislative body through an administrative board, it is very plain that this act is in violation of the Fourteenth Amendment of the Federal Constitution in that it denies appellee due process."

With the exception of the Virginia decision now here under review it is believed that the case of *Smith* v. *Command*, decided by the Supreme Court of Michigan, June 18, 1925, 204 N. W. 140; 40 A. L. R. 515 and note, is the latest decision of any state court of last resort upon a similar enactment.

The decision in *Smith* v. *Command* was by a divided court. The opinions by the majority and by the minority of the Court are both notable for the breadth of view and historical research in eugenics and learning displayed and for the reviews made of previous decisions and of the principles involved, legal and scientific.

In *Smith* v. *Command* the majority of the Court held:

> "The State may under its police power provide for sterilization of feeble-minded persons; that such sterilization is not prevented by a constitutional prohibition of cruel and unusual punishment; that provision for sterilization of mental defectives with sexual inclinations, where it is probable that their children would have an inherited tendency to mental defectiveness, without including other classes of mental defectives, is not an unreasonable classification which deprives the included class of the equal protection of the law; that so much of a statute providing for sterilization of mental defectives as applies to those who probably cannot support their children makes an arbitrary classification and deprives them of the equal protection of the law, but that the invalidity of this part of the statute did not render the valid classification aforesaid invalid. But it was held that the order for sterilization must be vacated and set aside on account of the failure to follow the practice provided by the statute."

It will be observed from the foregoing cases, which are fairly typical of the limited number of court decisions upon the subject, that none of them holds that the State is without the power in question provided it be exercised through a statute that both affords due process of law and operates alike upon all individuals of the class affected, but those courts which follow the New Jersey case hold that limiting the operation of such a statute to inmates of State custodial institutions denies such inmates the equal protection of the laws and renders the statute unconstitutional and *in toto*.

When it is considered that those who are subject to commitment to these institutions constitute classes well defined by the statutes (Va. Code, §§1066-1077), and thus become because of mental defectiveness wards of the State, and being because of mental defects themselves incapable of deciding what is best for themselves, can it be said that it involves an unreasonable classification to provide for them tribunals judicially to de-

termine what in the respect indicated will promote their welfare and having so found to order their sterilization—an adjudication which the Virginia statute requires further to be supported by the finding that the action proposed will also promote the public welfare?

It is submitted that an examination of the decisions in the foregoing cases from other jurisdictions so far as they may appear adverse to the contentions here made will disclose that those decisions were based upon conditions not found in the Virginia statute or upon conclusions otherwise unsound in the light of the provisions of the Virginia Act and the facts in the record of the case at bar.

The Constitutional Provisions Involved.

The Constitution of Virginia.

Section 1 of Article I. the Bill of Rights, in the Constitution of Virginia provides:

> "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

Among the liberties of the citizen which are thus guaranteed is the right to follow such pursuits as he may deem best adapted to his faculties and will afford him the highest enjoyment, to be free in the enjoyment of all of his faculties, to be free to use them in all lawful ways, to live and work where he will, and to earn his livelihood by any lawful calling. *Young* v. *Com.*, 101 Va. 853, 45 S. E. 327.

Section 9 of the same Bill of Rights provides:

> "That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

The Constitution of the United States.

The Eighth Amendment of the Constitution of the United States provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

The Fourteenth Amendment to the Constitution of the United States provides, among other things:

> "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It may be conceded that the liberty to have children is a right within the protection of the constitutional provisions quoted and that no citizen against his will may be deprived of that right without due process of law, or by a law that may not operate uniformly upon persons similarly situated when not unreasonably classified.

This much being conceded it remains to inquire in what right the Virginia statute under review may be sustained.

By way of answer to this inquiry counsel for the defendant in error submit the following:

ARGUMENT.

POINT I.

The Act Does Not Impose Cruel and Unusual Punishment.

At the outset it may be observed under this head of the discussion that the act is not a criminal statute nor has it any punitive motive and therefore that the constitutional provisions having in contemplation criminal enactments have no application. This consideration alone it is submitted is conclusive.

Further, the statute provides no "punishment" at all but on the contrary is designed to be beneficial and remedial for those within its terms. Even for the liberty it may take away—if there can be liberty to procreate when one is already in permanent custodial care under conditions of physical separation expressly designed to prevent procreation—it returns a larger liberty in freedom from confinement. This is relief, not punishment.

Again, the evidence establishes that the operation contemplated is practically painless and without appreciable risk to health or life and therefore also is not at all within the intendment of the constitutional provisions in issue.

It is generally held that a constitutional provision prohibiting the infliction of cruel and unusual punishment applies to and is directed against punishment of a barbarous character, involving torture, such as drawing and quartering the culprit, burning at the stake, cutting off the nose, ears or limbs, and the like and such punishments as were regarded as cruel and unusual at the time the constitution was adopted.

Hart v. *Com.*, 131 Va., at pages 741 and 748.

In re Kemmler, 136 U. S. 436; 10 Sup. Ct. 930; 34 L. Ed. 519.

Collins v. *Johnson*, 237 U. S. 509; 35 Sup. Ct. 649; 59 Law Ed. 1071.

Weems v. *U. S.*, 217 U. S. 349; 54 L. Ed. 793, 30 Sup. Ct. Rep. 544; 19 Ann. Cas. 705, and cases cited.

To the *Weems Case* as reported in 19 Am. & Eng. Ann. Cas., at page 725, is appended an exhaustive note on what is cruel and unusual punishment.

In *State* v. *Feilin*, 70 Wash. 65, 32 Ann. Cas. 1914B, 512, which was a criminal case, it was expressly held that an asexualization operation, vasectomy in that case, was not a cruel punishment.

Finally and conclusively this Court held in the *Weems Case, supra*, that the provision in the Federal Constitution (amendment 8) does not apply to State legislatures.

In no aspect of the matter therefore it is submitted can the act here in issue be fairly brought within the constitutional prohibitions against cruel and unusual punishments.

POINT II.

The Act Affords Due Process of Law.

"Due process of law" requires (1) A duly established impartial tribunal having (2) lawful jurisdiction to hear and determine only after (3) previous reasonable notice and (4) an opportunity to be heard, before any binding order can be entered affecting a person's liberty.

The statute here provides and the record upon this appeal shows that every one of these four essential requisites named have been met—(1) The Special Board of Directors of the Colony was by the statute made the tribunal and (2) given jurisdiction to hear and determine, and after (3) the thirty days' previous notice given pursuant to the statute to the patient, her only surviving parent, and a guardian appointed by the Court to protect her interest in the proceeding, that Board (4) with the patient and her guardian present and participating in the hearing determined the matter, which judgment was afterwards with notice and further opportunity to be heard reviewed in the Circuit Court upon appeal with the further right of appeal to the Supreme Court of Appeals of Virginia evidenced in consummation by this present appeal.

Here it is therefore submitted all the requirements of due process of law have been fully complied with.

> "It is very true that 'due process of law' requires that a person shall have reasonable notice and opportunity to be heard before an impartial tribunal before any binding

decree or order can be made affecting his rights to liberty or property; but this constitutional safeguard cannot avail appellee upon the uncontradicted facts as to the proceedings before the Board of Fisheries and the Commission of Fisheries touching this controversy. The proceedings were had before the Board of Fisheries and its successor in office, a department of the State government, to whose judgment and discretion the legislature has committed the supervision and control of the natural oyster-beds, rocks and shoals within the waters of the Commonwealth, as well as the oyster industry of the Commonwealth, and made the decision of that tribunal conclusive of all controversies with respect to the same. The proceedings in this case before that tribunal were in strict accordance with the requirements of the statute, and not only did appellee have reasonable notice thereof, but every reasonable opportunity to be heard and was heard from time to time before the order it now complains of was made by the board. It would be difficult to find a case in which the required 'due process of law' has been more fully met and complied with.

In the case of *Reetz* v. *Michigan*, 188 U. S. 505, 47 L. Ed. 563, 23 Sup. Ct. 390, in point here, the following is quoted from the opinion of Mr. Justice Matthews in *Hurlado* v. *California*, 110 U. S. 516, 28 L. Ed. 232, 3 Sup. Ct. 111, 292, reviewing at length the authorities and discussing the elements of due process of law: 'It follows that any legal proceeding enforced by public authority, whether sanctioned by age or custom or merely devised in the discretion of the legislative power, in the furtherance of the general public good, which regards and preserves those privileges of liberty and justice, must be held to be due process of law.' See also *Murray* v. *Hoboken L. Co.*, 18 How. 272, 15 L. Ed. 372; Ex parte Wall, 107 U. S. 265, 27 L. Ed. 552, 2 Sup. Ct. 569."

Commission v. *Hampton &c. Co.*, 109 Va. 565, at pages 585 and 586.

See also *Mallory* v. *Va. Colony Feeble-Minded*, 123 Va. 205.

"What is due process of law is not easily defined. Generally speaking, the 'law in its regular course of administration through courts of justice is due process.'

Equal protection of the laws does not guarantee to all persons in the United States, or in a single state, the benefits of the same laws and the same remedies. Every Legislature may, subject to constitutional limitations, prescribe what evidence shall be received in courts of its own jurisdiction.

The Fourteenth Amendment to the Constitution of the United States does not forbid the passage by the Legislature of a law which applies to a class only, provided the classification be reasonable and not arbitrary, and applies alike to all persons similarly situated. Whether the classification is reasonable is a question primarily for the Legislature. It is presumed to be necessary and reasonable, and the courts will not substitute their judgment for that of the Legislature, unless it is clear that the Legislature has not made the classification in good faith."

Anthony v. *Commonwealth*, 128 S. E., p. 635.

. . . . . .

"In *Brown* v. *New Jersey*, 175 U. S. 172, 20 S. Ct. 77, 44 L. Ed. 119, Mr. Justice Brewer, speaking for the Court said:

"So, in *Hayes* v. *Missouri*, 120 U. S. 68 (7 S. Ct. 350, 30 L. Ed. 578), it appears that a certain number of peremptory challenges was allowed in cities of over 100,000 inhabitants, while a less number was permitted in other portions of the State. It was held that that was no denial of the equal protection of the laws, the court saying, page 71: 'The Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.' . . ." Idem, page 635.

"In *Hayes* v. *Missouri*, 120 U. S. 68, 7 S. Ct. 350, 30 L. Ed. 578, Mr. Justice Field, speaking for the court said:

'The Fourteenth Amendment to the Constitution of the United States does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed.'

"In *Twining* v. *New Jersey*, 211 U. S. 78, 29 S. Ct. 14, 53 L. Ed. 97, speaking for the court, Mr. Justice Moody said:

"Due process requires that the court which assumes to determine the rights of parties shall have jurisdiction *Pennoyer* v. *Neff*, 95 U. S. 714, 733 (24 L. Ed. 565); *Scott* v. *McNeal*, 154 U. S. 34 (14 S. Ct. 1108, 38 L. Ed. 896); *Old Wayne Life Association* v. *McDonough*, 204 U. S. 8 (27 S. Ct. 236, 51 L. Ed. 345), and that there shall be notice and opportunity for hearing given the parties (*Hovey* v. *Elliott*, 167 U. S. 409, 17 S. Ct. 841, 42 L. Ed. 215; *Roller* v. *Holly*, 176 U. S. 398, 20 S. Ct. 410, 44 L. Ed. 520), and see *Londoner* v. *Denver*, 210 U. S. 373, 28 S. Ct. 708, 52 L. Ed. 1103. Subject to these two fundamental conditions, which seem to be universally prescribed here in all systems of law, established by civilized countries, this court has up to this time sustained all state laws, statutory or judicially declared, regulating procedure, evidence and methods of trial, and held them to be consistent with due process of law." Idem, page 636.

"In 1 Dillon, Municipal Corporations (5th Ed.) § 146, the law is stated thus:

" . . . The Legislature may determine what difference in situation, circumstances and needs call for a difference of class, subject to the supervision of the courts, as the final interpreters of the Constitution, to see that it is actually classification, and not special legislation under that guise. The presumption is always in favor of the legislative command, and it must prevail unless clearly transgressing the constitutional prohibition. If the distinctions are genuine and not merely artificial and irrelevant means of evading the constitutional prohibition, the courts must declare the classification valid, though they may not

consider it to be on a sound basis. The test is, not wisdom but good faith in the classification.'

"Having under consideration the question of the effect of the equal protection clause of the Fourteenth Amendment upon class legislation by the state, the Supreme Court of the United States, in *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 78, 31 S. Ct. 340, 55 L. Ed. 369, Ann. Cas. 1912C, 160, said:

"A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality. . . . When the classification . . . is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. . . . One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." (Pages 636-7.)

Anthony v. *Commonwealth* (Va.) 128 S. E., 633.

POINT III.

The Act is a Valid Exercise of the Police Power.

1. IN GENERAL.

That the insane, feeble-minded and other defectives in proper cases and by due process of law, as in the present case, may be taken and kept in custody by the State and so deprived of the liberty otherwise protected by constitutional sanctions is beyond question. This the State does in the exercise of its police power.

The courts generally are indisposed to suffer the police power to be impaired or defeated by constitutional limitations.

"In *Barbier* v. *Connolly*, 113 U. S. 27, 31, 5 S. Ct. 357, 359, 28 U. S. (L. Ed.), 923, Mr. Justice Field, in speaking of the effect of the Fourteenth Amendment of the Federal Constitution upon exercise by a State of its police power, says: 'But neither the amendment, broad and compre-

hensive as it is, nor any other amendment, was designed to interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develop its resources, and add to its wealth and prosperity'."

Shenandoah Lime Co. v. *Governor*, 115 Va. 875; 37 Ann. Cas. 975.

Section 159 of the Constitution of Virginia provides that "the exercise of the police power of the State shall never be abridged."

"The authorities show that the courts generally are indisposed to suffer the police power to be abridged or defeated by constitutional limitations. It is possible, of course, for the Constitution to impose such limitations, but they must be clearly imposed or there are no such limitations. The police power is not paramount to the Constitution, but its free exercise is never interfered with unless plainly in conflict therewith. *Shenandoah Lime Co.* v. *Governor*, 115 Va. 874, 80 S. E. 753, Ann. Cas. 1915C, 973. The power of the state not only embraces regulations designed to promote public convenience and general prosperity, but also such regulations as are designed to promote the public health, public morals, or the public safety. *Chicago, B. & Q. R. Co.* v. *Illinois*, 200 U. S. 592, 26 Sup. Ct. 341, 50 L. Ed. 609, 4 Ann. Cas. 1175.

In *Eubank* v. *Richmond*, 226 U. S. 142, 57 L. Ed. 158, 33 Sup. Ct. 77, 42 S. R. A. (N.S.) 1123, Ann. Cas. 1914B, 192, we find this as to the police power: 'That power we have defined, as far as it is capable of being defined by general words, a number of times. It is not susceptible of circumstantial precision. It extends, we have said, not only to regulations which promote the public health, morals and safety, but to those which promote the public convenience or the general prosperity. (*Chicago, B. & Q. R. Co.* v. *Illinois*, 200 U. S. 561, 50 L. Ed.

596, 26 Sup. Ct. 341, 4 Ann. Cas. 1175.) And further, 'it is the most essential of powers, at times the most insistent, and always one of the least limitable of the powers of the government.' (*District of Columbia* v. *Brooke*, 214 U. S. 138, 149, 53 L. Ed. 941, 945, 29 Sup. Ct. 560.) But necessarily it has its limits and must stop when it encounters the prohibition of the Constitution. A clash will not, however, be lightly inferred. Governmental power must be flexible and adaptive. Exigencies arise, or even conditions less peremptory, which may call for or suggest legislation, and it may be a struggle in judgment to decide whether it must yield to the higher considerations expressed and determined by the provisions of the Constitutions. *Hoble State Bank* v. *Haskell*, 219 U. S. 104, 31 Sup. Ct. 186, 55 L. Ed. 112, 32 L. R. A. (N.S.) 1062, Ann. Cas. 1912A, 487. . . . But in all cases there is the constant admonition, both in their rule and examples, that when a statute is assailed as offending against the higher guaranties of the Constitution, it must clearly do so to justify the courts in declaring it invalid."

Strawberry &c. v. *Starbuck*, 124 Va. 71, at pages 87-88-89.

VACCINATION STATUTES.

An exercise of the police power analagous to that of the statute here in issue may be found in the compulsory vaccination statutes for there, as here, a surgical operation is required for the protection of the individual and of society and that requirement has been upheld when imposed upon school children only, those attending public institutions of learning, though not imposed upon the public as a whole.

In *Jacobson* v. *Massachusetts*, 197 U. S. 11; 3 Ann. Cas. 765, the Supreme Court of the United States said:

> "The authority of the state to enact this statute is to be referred to what is commonly called the police power—a power which the state did not surrender when becoming a member of the union under the Constitution. Although this court has refrained from any attempt to define the

limits of that power, yet it has distinctly recognized the authority of a state to enact quarantine laws and 'health laws of every description'; indeed, all laws that relate to matters completely within its territory and which do not by their necessary operation affect the peoples of other states. According to settled principles the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety. *Gibbons* v. *Ogden*, 9 *Wheat.* (U. S.) 1, 203; *Hannibal, etc. R. Co.* v. *Husen*, 95 U. S. 465, 470; *Boston Beer Co.* v. *Massachusetts*, 97 U. S. 25; *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S. 650, 661; *Lawton* v. *Steele*, 152 U. S. 133. . . .

"We come, then, to inquire whether any right given or secured by the Constitution is invaded by the statute as interpreted by the state court. The defendant insists that his liberty is invaded when the state subjects him to fine or imprisonment for neglecting or refusing to submit to vaccination; that a compulsory vaccination law is unreasonable, arbitrary and oppressive, and therefore hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best; and that the execution of such a law against one who objects to vaccination, no matter for what reason, is nothing short of an assault upon his person. But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. This court has more than once recognized it as a funda-

mental principle that 'persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health and prosperity of the state; of the perfect right of the legislature to do which no question ever was, or upon acknowledged principles ever can be, made, so far as natural persons are concerned.' *Hannibal, etc. R. Co.* v. *Husen*, 95 U. S. 465, 471; *Missouri, etc. R. Co.* v. *Haber*, 169 U. S. 613, 628, 629; *Thorpe* v. *Rutland, etc. R. Co.*, 27 Vt. 140, 148. In *Crowley* v. *Christensen*, 137 U. S. 86, 89, we said: 'The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is then liberty regulated by law.'

. . . . . .

"It is said, however, that the statute, as interpreted by the state court, although making an exception in favor of children certified by a registered physician to be unfit subjects for vaccination, makes no exception in the case of adults in like condition. But this cannot be deemed a denial of the equal protection of the laws to adults; for the statute is applicable equally to all in like condition, and there are obviously reasons why regulations may be appropriate for adults which could not be safely applied to persons of tender years."

See also *Viemeister* v. *White*, 179 N. Y. 235, 1 Am. & Eng. Ann. Cas. 334.

Liberty of Plaintiff in Error Already Restricted.

As we have seen, the State may and does confine the feeble-minded, thus depriving them of liberty. When so confined they

are by segregation prohibited from procreation—a further deprivation of liberty that goes unquestioned.

Again by statute in Virginia it is provided:

> "§5088b. Unlawful marriage of such persons.—If any man or woman shall knowingly marry any person lawfully adjudged to be insane, epileptic or feeble-minded, and duly admitted as a patient or inmate in any State hospital or colony for the insane, epileptic or feeble-minded, whether such person be actually confined in a hospital or colony or in the custody of some person on bond or furlough or at large as an escape patient or inmate, he or she shall be guilty of a misdemeanor, and on conviction thereof shall be confined in jail not exceeding six months or fined not exceeding five hundred dollars, or both. Any such marriage, if attempted to be entered into, shall be absolutely void without any decree of divorce or other legal process." Acts 1922, p. 470; Michie's Code, Sec. 5088b.

See also Acts 1924, p. 666; Acts 1918, p. 473; Michie's Code, Secs. 4414, 5088a.

The appellant, Carrie Buck, is under the foregoing statutes already by law prohibited from procreation.

The Question Narrowed.

The precise question therefore here presented is whether the State in its judgment of which is best for appellant and for society may through the medium of the operation provided for by the sterilization statute restore to her the liberty, freedom and happiness which thereafter she might safely be allowed to find outside of institutional walls.

But it is contended that the State may not so legislate for Carrie and others similarly situated and in its custody, as she is, without bringing under the mandate of the same statute those likewise afflicted in mind but who have not been committed to custodial institutions, that to give to Carrie her freedom through an operation while not imposing the same

operation upon others already free is to deny Carrie the equal protection of the laws.

It is submitted that this reasoning will not stand up under examination in the light of accepted principles.

The Operation Not Illegal in Itself.

The operation involved is not damaging to health. The record here shows that this operation is not infrequently performed for the sole purpose of promoting health even when sterilization is not sought, though sterilization results. (Rec., pp. 89, 90, 92.)

No legal reason appears why a person of full age and sound mind and even though free from any disease making such operation advisable or necessary may not by consent have the operation performed for the sole purpose of becoming sterile, thus voluntarily giving up the capacity to procreate. The operation therefore is not legally *malum in se*. It can only be illegal when performed against the will or contrary to the interest of the patient.

Who to Consent for the Plaintiff in Error.

Who then is to consent or decide for Carrie whether it be best for her to have this operation?

She cannot determine the matter for herself both because being not of full age her judgment is not to be accepted nor would it acquit the surgeon, and because also besides being under age, she is further incapacitated by congenital mental defect.

Her father is dead, her mother is mentally incapacitated and herself under custodial care. Carrie has no other natural guardian and is herself a very ward of the State, so that who indeed is here but the State, acting through appropriate officers, agents, instrumentalities and tribunals, to decide for Carrie, and for others like her whom it has taken into custody, whether it

be better for her and them to have the operation in question and thereby qualify for readmission to the outside world and its larger freedom rather than have to languish for many years under institutional care and custody deprived of much happiness?

Poor the Commonwealth in powers and helpless in authority if she be incompetent thus to act for her afflicted children.

And to preserve what liberty is it that the State would be thus denied? Carrie's natural freedom to bear children—that is already taken away by other statutes which both incarcerate her and forbid her marriage in or out of the institution. If not so taken away, in what right either to herself or to the likewise afflicted offspring that she might bear or to society itself whose burden such off-spring would be, could she be justified in bringing another such child into the world? Surely any right that she might so claim must give way to the larger right of society to protect her, her offspring and society itself humanely against such afflictions and burdens.

2. THE STATUTE IS PART OF A GENERAL PLAN APPLICABLE TO ALL FEEBLE-MINDED.

The statute is in effect applicable to all feeble-minded persons, for all feeble-minded persons are subject to commitment. That all feeble-minded are not in fact proceeded against and committed does not alter the situation which makes all the feeble-minded subject to the sterilization statute through the liability they are under to be committed if and when and after they are so proceeded against.

The State has provided that all feeble-minded persons who under the laws of heredity are likely to become parents of offspring likewise afflicted and who are within the other terms of the statute may first by commitment and afterwards by petition of the Superintendent of the institution be brought under the operation of the sterilization act.

Further the State provides extraordinary care in the determination of who shall have the status of feeble-minded. Not until after there has been both a judicial commitment and expert observation in an institution for at least two months is that status fixed and then the person and all the persons of the status so determined come under the operation of the sterilization act if otherwise within its terms. Code, Sec. 1083.

STATUTES FOR THE FEEBLE-MINDED IN *pari materia*.

The following extracts from the general statutes of the State may be helpful to a better understanding of the status of the feeble-minded and the care provided for them:

> "§1075. Feeble-minded person and idiot defined.—The words 'feeble-minded person' in this chapter shall be construed to mean any person with mental defectiveness from birth or from an early age so pronounced that he is incapable of caring for himself or managing his affairs, or of being taught to do so, and is unsafe and dangerous to himself and others, and to the community, and who consequently requires care, supervision and control for the protection and welfare of himself, others and the community, but who is not classible as an 'insane person' as usually interpreted."
>
> . . . . . .
>
> "§1077. Who is to be received in the State colonies for epileptics and feeble-minded; employment, training of patients, education, et cetera.—The superintendent of the State colony for epileptics and feeble-minded, shall receive and care for such feeble-minded white persons who are legal residents of Virginia as under the laws of the State may be committed to the said colony provided that in committing persons to the said colony and in receiving them therein, those indigent white persons who would be most likely to receive benefit from colony care and training, women of child-bearing age, from twelve to forty-five years of age, and children not under eight years of age, to whom such training would be of most benefit, shall, as

far as practicable, be first received and admitted. And in order to promote the object for which the said colony is established for the protection of society and feeble-minded persons themselves, and that those who are capable of being trained so as to support themselves may eventually leave the institution and enjoy the life and liberty of the outer world, the superintendent thereof and the said special board of directors shall, as far as practicable, provide suitable employment for such patients and such training, both educational and industrial, as may be adapted to their capacities, and shall see that such moral, medical and surgical treatment as they may deem proper shall be given such patients in order to promote the objects for which the institution is provided."

. . . . . .

"§1078. Petition to have person declared feeble-minded.—No feeble-minded person shall be sent to any institution, except as hereinbefore or hereafter provided. When any person residing in this State shall be supposed to be feeble-minded, any reputable citizen of the State may file a petition in the circuit court of the county, or corporation court of the city, or with the judge thereof in vacation, or before any justice in the city or county in which such alleged feeble-minded person is found, setting forth under oath the circumstances indicating the feeble-mindedness of the person named, the facts of his social and financial condition and surroundings, and the names and financial condition of the person, if any, having the custody or control, and on whom he is dependent, together with the names of his parents, or guardian, if he be a minor, or the next of kin, if any person occupying any of these relations to the person suspected of being feeble-minded be known to the petitioner to be living in the county or city in which the petition is filed."

. . . . . .

"§1083. Tests of mentality of patients.—On the admission of a feeble-minded person into an institution, pursuant to the provisions of this chapter, the superintendent of the institution shall cause the mental condition

of such person to be examined, and said person placed under special observation for a period of not less than two months, during which time such person shall be subjected to the Binet Simon measuring scale for intelligence, or some other approved test of mentality, to be applied by the superintendent of said colony and by an expert designated by him and approved by the special board of directors of the institution or colony; and if, in their opinion, such person is not feeble-minded within the meaning of this chapter, or is not a suitable subject for care and treatment, at the colony or hospital he shall be returned to the city, county or institution from which he was committed, at the expense of such county, city, or institution."

. . . . . .

"§1091. Feeble-minded persons; how furloughed, paroled and discharged from colonies.—. . . The superintendents of the said colonies shall not furlough any female of child-bearing age whose immoral or incorrigible tendencies render it unsafe for herself or society, in his opinion, to be at large. The said superintendent may also parol on their own recognizance such feeble-minded persons of the higher mental grade, who in his opinion, after due observation and proper treatment, are capable of earning his or her own living and of conducting himself or herself in a law-abiding manner." Michie's Code, Secs. 1075, 1078, 1080, 1083, 1091.

Plaintiff in Error's Position Contrasted with that of the Uncommitted Feeble-Minded.

Having seen the situation in which the appellant, Carrie Buck, is found as a committed patient of the Colony, let her situation in respect of liability to sterilization be compared with that of the feeble-minded woman of like age, condition and heredity who has not been committed, that such comparison may disclose whether the law bears so unequally upon Carrie as to be an illegal discrimination against her.

If the woman outside were not subject to commitment under the general laws applicable to all and could not thus through

commitment be brought within the operation of the sterilization act, it might with some appearance of just plausibility be contended that there is discrimination. But such is not the case, for the woman outside, if feeble-minded and otherwise qualified, may by the same process through which Carrie went first, commitment and afterwards a sterilization hearing—be sterilized, so that neither she nor Carrie is denied the equal protection of the laws.

If it be impracticable, as likely it is because of their number, that all the feeble-minded shall be taken into custodial care in institutions, the State should not be denied the power through an "in and out system" to take in such as it may and discharging such of these as it may after proper treatment, to make way for others until all shall be reached.

THE BROAD VIEW.

Taking therefore that broad view of the subject which it should have and construing the sterilization act along with the other statutes in *pari materia* as affecting the feeble-minded, it is found that, in the beneficent exercise of its police power both to ameliorate the condition of those so afflicted and to promote the general welfare, the Commonwealth has provided a general scheme and plan applicable to all feeble-minded and having only such provisions of flexibility as may make it properly meet the special needs of individual cases.

This being true, it is submitted that the sterilization act as a part of a coördinated plan of legislation applying to all feeble-minded alike is not obnoxious to the objection that it denies the equal protection of the laws to appellant and should be sustained and the order below affirmed.

3. THE STATUTE MAY BE SUSTAINED AS BASED UPON A REASONABLE CLASSIFICATION.

If, notwithstanding the considerations already stated, doubt remains whether the statute in question may not by cutting in

two a natural class arbitrarily make an unreasonable classification and applying to one of the two classes thus arbitrarily made a requirement not made applicable to the other and thus become obnoxious to the equality clause of the Federal Constitution, as is urged in appellant's petition for this appeal, then it is submitted:

1. As has already been demonstrated, since the feeble-minded outside of State Institutions are under the general statutes subject to commitment thereto and may thus be brought within the operation of the sterilization act in the same way that appellant has been so brought, the act thus reaches the whole class of the feeble-minded whether in or out of custody, commitment to the custody of a state institution to which all of the class alike are liable being but one step in the process of sterilization.

2. The fact of custody itself constitutes a reasonable basis of classification because—

(a) Thereby the patient is deprived of her liberty, and her status in respect of freedom of employment, occupation and movement is completely changed.

(b) She can no longer make decisions for herself or have them made by her natural guardians.

(c) She becomes the ward of the State which takes over her support and welfare.

(d) She may have her liberty and freedom of action restored only to such extent and upon such conditions as the State may determine.

(e) She becomes indeed of a class set apart, all of whose living conditions have been taken in charge by the State which must legislate for her and her class thus made because of their peculiar situation or else they must suffer.

These are certainly "common disabilities" which set aside those in custody marking them as proper objects for the operation of even special or class legislation.

CLASSIFICATION PERMITTED UNDER THE CONSTITUTION.

"Although class legislation is prohibited by the federal guaranty as to the equal protection of the laws, yet this does not prohibit a reasonable classification of persons and things for the purpose of legislation, but such classification is distinctly contemplated by this amendment. Hence as far as the federal constitution is concerned the state may classify persons and objects for the purpose of legislation if the classification is based on proper and justifiable distinctions, considering the purpose of the law."

. . . . . .

"A statute or ordinance depriving one of liberty or property does not amount to a denial of the equal protection of the laws because it does not apply to all persons within the jurisdiction of the legislative body enacting it, but is applicable only to certain of such persons. Under certain restrictions a legislative body has a right to discriminate amongst those persons and to limit the application of its laws to a portion of them only. The mere fact that legislation is based on a classification and is made to apply to certain persons, and not to others, does not affect its validity, if it be so made that all persons subject to its terms are treated alike under like circumstances and conditions."

. . . . . .

"If a class is deemed to present a conspicuous example of what the legislature seeks to prevent, the fourteenth amendment allows it to be dealt with, although otherwise and merely logically not distinguishable from others not embraced in the law. It is also unquestioned but that legislative classification may in many cases properly rest on narrow distinctions."

. . . . . .

"In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction the state is recognized as enjoying a wide range of discretion. The question of classification is primarily for the legislature, and it can never become a judicial ques-

tion except for the purpose of determining in any given situation, whether the legislative action is clearly unreasonable.

". . . Where there is a reasonable and practical ground of classification for legislative regulations under the police power, the classification should be sustained, even though some other classification or the absence of specific classifications would appear to some minds to be more in accord with the general welfare, since the discretion of selecting the subject of police regulations and the nature and extent of such regulations is left to the general law making power where there is no undoubted and irreconcilable conflict between the regulations and the provisions and principles of organic law."

. . . . . .

"One who assails the classification in a law must carry the burden of showing that it does not rest on any reasonable basis, but is essentially arbitrary, and not merely possibly, but clearly and actually unreasonable.

. . . . . .

"Minors are peculiarly entitled to legislative protection and form a class to which legislation may be exclusively directed without falling under the constitutional prohibition of special legislation and unfair discrimination."

6 R. C. L. Article Constitutional Law, Secs. 369 to 387, pp. 373-394, and cases cited.

"The equal protection clause of the fourteenth amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without reasonable basis, and there is purely arbitrary.

Polylaise v. *Com.*, 114 Va. 850, 76 S. E. 897.

"Police power is the name given to that inherent sovereignty which is the right and duty of the government or its agents to exercise whenever public policy in a broad sense demands, for the benefit of society at large, regulations to guard its morals, safety, health, order, or to in-

sure in any respect such economic conditions as an advancing civilization of a highly complex character requires."

8 Cyc. 863, and cases cited.

In the limits of a brief it would be impracticable to review any considerable part of the great multitude of cases, both State and Federal, that have arisen under the equality clause. Many of them are cited in 6 Ruling Case Law to support the text extracts therefrom quoted above.

"The validity of a police regulation must depend upon the circumstances of each case and whether the means employed are arbitrary and unreasonable beyond the necessities of the case.

Bowman v. *Va. St. Entomologist*, 128 Va. 351; 12 A. L. R. 1135.

We have already seen that vaccination statutes providing for compulsory surgical operations (for such are vaccine innoculations) have been upheld even when limited to those attending the public schools. There the health and public safety motive was predominant in support of such exercise of the police power.

The eugenical motive is judicially recognized in support of marriage laws, likewise enacted under the police power and directed against certain classes who are prohibited from marrying.

In Virginia as appears from the citations already given, marriage with the very class here involved, viz., feeble-minded inmates of state institutions, is prohibited, and its consummation visited with the very heaviest penalty of the law.

In Wisconsin a statute requiring male applicants for marriage to file a physician's certificate of freedom from disease was sustained in *Peterson* v. *Widule*, 157 Wis. 641; 147 N. W. 966; Ann. Cas. 1916B, 1040 and Note.

In *Maynard* v. *Hill*, 125 U. S. 190, 31 L. Ed. 654, this Court said:

> "Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the legislature."

The validity of a statute prohibiting the marriage of epileptics was sustained in *Gould* v. *Gould*, 78 Conn. 242; 61 Atl. 604, 2 L. R. A. (N. S.) 531.

In *Kinney* v. *Conn.*, 30 Grat. 858, 32 Am. Rep., the Court said:

> "The right to regulate the institution of marriage; to classify the parties and persons who may lawfully marry; to dissolve the relation by divorce; and to impose such restraints upon the relation as the laws of God and the law of propriety, morality and social order demand, has been exercised by all civilized governments in all ages of the world.

The purpose of the Act under review is reflected in the recitals of the preamble thereto (this preamble appearing in Acts of Assembly 1924, at page 569, but not carried into Michie's Code). Among those recitals is this:

> "Whereas, the Commonwealth has in custodial care and is supporting in various state institutions many defective persons who if now discharged or paroled would likely become by the propagation of their kind a menace to society but who if incapable of procreating might properly and safely be discharged and paroled and become self-supporting with benefit both to themselves and to society."

Here as also in the body of the act where is required a finding that the welfare of the patient will be promoted before there can be an order for sterilization, is made plain an essential object of the enactment and though society may also be benefited

both eugenically and otherwise from the act, the fact that the act is designed especially for those in confinement who under the act may be restored to a larger freedom makes clear a reasonable basis of difference in dealing with those so confined and constitutes a reasonable classification clearly within the power of the Legislature which is charged with the duty and responsibility of regulating the living conditions of those thus in the custody of the state.

The New Jersey Case.

The case of *Smith* v. *Board, etc.*, 88 Atl. 963, 32 Ann. Cas. 515, appears to be largely relied on for plaintiff in error.

Of that case it may first perhaps be fairly said, with due deference to the distinguished jurist who wrote the opinion, that the legislative purpose of the "betterment of society by means of the surgical sterilization of certain of its unoffending but undesirable members" was approached by the Court with an adverse mind, and the opinion bears internal evidences that this attitude colored the disposition of the legal questions involved in what was said of the policy and expediency of the law which it is submitted were matters for legislative rather than judicial determination.

Further it does not appear from the available report of that case that the New Jersey act had any other motive than the eugenical and was not based upon the purpose to promote the welfare of the patient as is the Virginia statute.

Again there was not present in that case, as there is here, the question of determining for one under the disabilities of both infancy and congenital defect of mind what was best for her, and there appears here also the express purpose to clear the way for a larger freedom, consideration of which was waived aside in that case.

On the whole, the provisions of the Virginia statute are so much more comprehensive in safeguarding the rights and in-

terests of the patient than was the New Jersey act that a decision upon that act rendered in apparent revulsion against its whole purpose as an innovation without merit and lacking sound humanitarian foundations, should not serve to block the path of progress in the light of scientific advance toward a better day both for the afflicted and for society whose wards they are.

The Policy and Expediency of the Act Is for Legislative Determination.

With the policy, expediency and wisdom of the act the courts have nothing to do. Those considerations are for determination exclusively by the Legislature. Such questions as whether it is better that feeble-minded women be kept in custodial care of institutions or after sterilization be given such freedom as may then be best for them and for society are legislative and not judicial questions.

The question before the Court is one of power only. If it be found that the Legislature has the power to do what it has here done without running counter to clear constitutional prohibitions, the Court may only so declare and there the function of the Court ends.

We are not permitted to approach a legislative enactment with an adverse mind as to its constitutionality.

The mere enactment of a law is a legislative declaration of the necessary constitutional power, which is entitled to great respect from a coördinate department of the government; every act is presumed to be constitutional until the contrary is made plainly to appear, and all doubts on the subject are to be solved in favor of its validity. Judicial opinions of expediency cannot be substituted for the will of the legislature when constitutionally expressed. *Pine* v. *Commonwealth*, 121 Va. 812.

A large discretion is vested in the legislature to determine what the interests of the public require and also as to what is

necessary for the protection of such interests, and every possible presumption is to be indulged in favor of the validity of a statute. *Bowman* v. *Va. Etate Entomologist*, 128 Va. 351.

CONCLUSION.

Upon the whole case it is submitted that the Virginia Sterilization Act is not obnoxious to the constitutional objections urged against it and that it affords due process of law, does not impose a cruel and unusual punishment and does not deny to plaintiff in error the equal protection of the laws, and that therefore the judgment appealed from should be here affirmed.

Respectfully,

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March 15, 1927.